Supreme Court, U.S.
FILED

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No.

In The Supreme Court Of The United States
October Term, 1993

C. William Garratt,
Petitioner.

v.

Eddie M. Morris, Edsel Morris,
and Donna Piotrowski,
Respondents,

Petition For Writ Of Certiorari To The Michigan Supreme Count

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QUESTIONS PRESENTED FOR REVIEW

1.

WHETHER A CITIZEN/LAWYER'S RIGHTS TO DUE PROCESS, FREE EXPRESSION AND ACCESS TO THE COURTS ARE VIOLATED WHEN HE IS SANCTIONED UNDER A STATE'S COURT RULES WHICH DO NOT SPECIFICALLY PROHIBIT THE CONDUCT FOR WHICH HE IS SANCTIONED AND WHICH CONDUCT CONSISTS SOLELY OF REPRESENTING HIS CLIENT AND FILING PAPERS WHICH WERE NEVER IDENTIFIED AS SANCTIONABLE UNDER THOSE COURT RULES.

2.

WHETHER A CITIZEN/LAWYER'S RIGHTS TO DUE PROCESS AND ACCESS TO THE COURTS ARE VIOLATED WHEN HE IS SANCTIONED UNDER A STATE'S COURT RULES FOR ALLEGEDLY SIGNING "PLEADINGS" IN A CASE, BUT IN FACT HAD NEVER SIGNED A PLEADING IN THAT CASE AND THE ALLEGEDLY OFFENDING "PLEADINGS" WERE NEVER IDENTIFIED BY THE TRIAL COURT OR STATE APPELLATE COURTS, INCLUDING THE STATE'S HIGHEST COURT.

3.

WHETHER A STATE COURT RULE FOUND BY THE STATE'S HIGHEST COURT TO PROHIBIT CERTAIN OTHERWISE LEGITIMATE EXPRESSIVE CONDUCT IS VOID FOR VAGUENESS WHEN IT CONTAINS NO EXPRESS OR IMPLIED PROHIBITION AGAINST SUCH CONDUCT.

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LOWER COURT OPINIONS

Bechtold v. *Morris*, 443 Mich. 105, 503 NW2d 654 (1993), *reh'g denied*, (1993).[1]

[1]Although Elizabeth A. Bechtold was a party to the proceedings below, it is Petitioner's belief that Ms. Bechtold has no interest in the outcome of this Petition. Pursuant to Rule 12.4 of the Rules of the Supreme Court of the United States, Petitioner hereby requests that Elizabeth A. Bechtold not be deemed a party in this Court.

JURISDICTIONAL STATEMENT

1. Petitioner seeks review of the August 3, 1993 Opinion of the Michigan Supreme Court and of that Court's September 14, 1993 Order denying Petitioner's request for rehearing.

2. Jurisdiction is conferred upon this Supreme Court pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS RELIED UPON

Petitioner relies upon the First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Petitioner also relies upon Section 1 of the Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTE RELIED UPON

Petitioner relies upon 28 U.S.C. §1257(3):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Petitioner further relies upon Michigan Court Rules 1.101, 2.110(A), 2.113(A) and 2.114, the text of which and relevant Notes thereto are set out in Appendix "D", *infra*.

STATEMENT OF THE CASE

In 1989, Michigan Court Rule ("MCR") 2.114,[1] the Michigan equivalent of FRCivP 11 ("Rule 11"), stated:

> **RULE 2.114 SIGNATURES OF ATTORNEYS AND PARTIES; VERIFICATION; EFFECT; SANCTIONS**
>
> **(A) Verification.**
>
> (1) Except when otherwise specifically provided by rule or statute, a pleading need not be verified or accompanied by an affidavit.
>
> (2) If a pleading is required or permitted to be verified, it may be verified by
>
> (a) oath or affirmation of the party or of someone having knowledge of the facts pleaded; or
>
> (b) including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief".
>
> In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (A)(2)(b) may be found in contempt of court.
>
> **(B) Signature Requirement.** Every pleading of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the pleading.
>
> **(C) Failure to Sign.** If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.

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[1]In 1991 MCR 2.114(D) and (F) were amended to make clear that punitive damages are not a permissible sanction.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.114(D) then apparently differed substantively from Rule 11 in only respect: sanctions could be imposed only on signers of "pleadings" that violated (D)(1), (2) and/or (3).[2] The term "pleadings" was defined elsewhere in the Michigan Court Rules to be only a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to any of the foregoing pleadings, and a reply to an answer. MCR 2.110(A).

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[2]Subrule (D) refers only to "pleadings", while Subrule (A), (B) and (C) refers to "Pleading[s], motion[s] and other paper[s]".

Like FRCivP 11 in the federal forum, MCR 2.114(D) has suffered from conflicting interpretations in the Michigan courts. In 1991, for example, a panel of the Michigan Court of Appeals first held that MCR 2.114(D) sanctions could issue for improperly signed papers other than pleadings, *Morris* v. *Detroit*, 189 Mich.App. 271, 472 NW2d 43 (1991); a year later, another panel held that such sanctions could only be imposed for "pleadings" and not motions or other papers. *Richmond Twp.* v. *Erbes*, 195 Mich.App. 210, 49 NW2d 504 (1992).

This conflict was resolved by the Michigan Supreme Court for the first time only four months ago when that Court ruled in the instant case that a Michigan lawyer could be sanctioned under MCR 2.114(D) for filing improperly signed papers other than pleadings, *Bechtold* v. *Morris*, 443 Mich. 105, 503 NW2d 654 (1993). No such authority existed in 1989, however, when the Petitioner herein briefly represented Plaintiff.

Plaintiff, a paralegal, had filed this action in April 1989 against her ex-husband, Respondent Eddie M. Morris. Plaintiff drafted, signed and filed her complaint *in pro per* and had no attorney of record when she instituted this lawsuit.

Plaintiff thereafter added as parties to this action Respondent Eddie Morris' father and sister, Respondents Edsel Morris and Donna Piotrowski. When those Respondents were added as parties, Petitioner was still not Plaintiff's attorney and had not signed or filed any papers in this matter.

On November 9, 1989 Respondents, before any discovery was taken, filed their "Motion to Strike, To Dismiss And For Sanctions" seeking dismissal of all of Plaintiff's claims. In response to that dispositive motion, Plaintiff filed, as of right, her "First Amended Complaint" and her "Response" to Defendant's dispositive motion. Again, Plaintiff signed both of those papers *in pro per*; Petitioner had still not appeared on Plaintiff's behalf and had still not signed or filed any papers in this matter.

On November 27, 1989, the trial court adjourned the hearing on Respondents' pending dispositive motion and permitted the parties to take limited discovery relating solely to whether Plaintiff had released Respondents from liability for the causes of action she alleged. While Plaintiff attempted to conduct that limited discovery, Respondents frustrated Plaintiff's efforts to obtain any discovery.

Petitioner thereafter undertook Plaintiff's representation for the limited purpose of aiding Plaintiff in obtaining discovery from Respondents, attending Plaintiff's deposition taken by Respondents, and attempting to defend Plaintiff against Respondents' voluminous motion papers.

Petitioner's representation of Plaintiff lasted less than one month. That is, Petitioner's representation of Plaintiff terminated prior to the December 18, 1989 hearing on Respondents' dispositive motion for summary disposition and for sanctions. Plaintiff's new counsel appeared at that hearing.

At that hearing, the trial court summarily dismissed Plaintiff's pleadings and awarded sanctions against Plaintiff and Petitioner, jointly and severally, in the amount of $11,500. Although Petitioner was permitted to address the Court with respect to whether sanctions should be imposed against him, no argument was entertained as to the amount of such sanctions.

The trial court's December 18, 1989 "Order Re Sanctions" states that sanctions were imposed against Plaintiff and Petitioner for their improper signing of *pleadings*. Appendix "C-1".

Petitioner, however, never signed any pleadings in this matter. MCR 2.110(A).

By stipulation between Plaintiff and Respondents (to which Petitioner did not consent), the trial court subsequently dismissed all sanctions against Plaintiff. Thus, Petitioner, who did not sign or file Plaintiff's purportedly frivolous pleadings, and who represented Plaintiff for less than one month regarding limited matters, was left alone to bear the entire burden of the $11,500 sanctions award.

Petitioner thereafter took a timely appeal of right to the Michigan Court Of Appeals and argued that, because he did not sign any pleading, let alone frivolous pleadings, the trial court erred in imposing sanctions against him. Petitioner's appeal also asserted, among other grounds, that the trial court's imposition of sanctions violated his federal constitutional rights, thereby raising the federal questions sought to be reviewed in the instant Petition.

Realizing that they faced certain reversal, Respondents changed their tack in the Michigan Court Of Appeals and there argued that the award of sanctions against Petitioner should be upheld because Petitioner signed non-pleadings (*i.e.*, still unspecified motions and affidavits) that, albeit truthful, supported the pleadings signed by Plaintiff herself. Despite the fact that Respondents' new assertions had never been raised, briefed or argued in the trial court, the Michigan Court Of Appeals adopted Respondents' reasoning and held, in pertinent part, as follows:

> The facts of the instant case indicate that while [Petitioner] may not have specifically signed the Complaint or First Amended Complaint, he signed various [truthful] motions and affidavits in support of these frivolous complaints and represented Plaintiff at various depositions and at the summary disposition hearing, thereby subjecting himself to the provisions of MCR 2.114. (emphasis supplied).

Appendix "B-2". Petitioner was, therefore, essentially sanctioned for "representing" Plaintiff. That is, Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Because MCR 2.114 does not provide for sanctions for representing a party, and because that rule, on its face, does not render sanctionable the signing of non-pleadings, Petitioner sought leave to appeal to the Michigan Supreme Court. Petitioner argued in his Application for leave to appeal that, even if he could be subjected

to sanctions for the signing of "improper" motions and affidavits, he was denied due process of law because no court had ever indicated *what* motion or affidavit signed by him was not well-grounded in law or fact or interposed for an improper purpose. MCR 2.114(D)(1), (2) and (3).

While the Michigan Supreme Court originally denied Petitioner's Application for leave to appeal, that Court, on Petitioner's motion for reconsideration, issued a published Opinion holding that a person who *files* an improperly signed paper (even if it is not a pleading or signed by the person filing) may be subjected to sanctions. Appendix "A-2". The Michigan Supreme Court did not, however, address Petitioner's constitutional arguments, identify the "improperly signed paper" attributable to Petitioner, or address if or why $11,500 was "compensatory" for whatever Respondents did in response to whatever Petitioner did improperly.

Petitioner's subsequent request for rehearing was denied by Order dated September 14, 1993. Appendix "A-4".

Thus, while this matter was used as a vehicle for announcing a new principle of Michigan jurisprudence, that principle, as applied in this case, denied Petitioner his rights to due process of law and free speech. That is, if Petitioner is to be sanctioned for filing or signing in 1989 allegedly improper non-pleadings, he is at least entitled to know what parts of what papers were allegedly offensive and to defend himself. Absent such basic information, Petitioner is denied a meaningful opportunity to respond to the allegations against him in violation of his constitutional rights. And to punish Petitioner for "representation" of a client or legitimate expressive conduct on the basis of a court rule which does not expressly prohibit such conduct denies Petitioner the rights secured to him by the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

I.

PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN, WITHOUT ANY MEANINGFUL OPPORTUNITY TO BE HEARD, HE WAS SANCTIONED FOR FILING UNSPECIFIED MOTIONS AND AFFIDAVITS.

The Fourteenth Amendment to the United States Constitution declares that no state shall "deprive any person of life, liberty or property without due process of law". The fundamental embodiment of the right to due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Matthews* v. *Eldridge*, 424 US 319 (1976). Thus, an opportunity for a hearing before a competent and impartial tribunal upon proper notice is an essential element of due process. *Parratt* v. *Taylor*, 451 US 527 (1981).

Petitioner's right to due process of law has been repeatedly violated in this case, both substantively and procedurally. First, the trial court issued an Order assessing sanctions against Petitioner for "having signed pleadings [sic] that this Court has determined contain false and scandalous allegations". But, in fact, as this Court can see from the list of each paper signed by Petitioner in this matter, compiled in Appendix "E", Petitioner had not signed any pleading. The meaninglessness of Petitioner's "opportunity" on December 18, 1989 is demonstrated by the trial court's deaf ear to the *undisputed* fact that Petitioner never signed any pleading and the trial court's abject failure and effective refusal to permit Petitioner to address the contention that the amount of sanctions assessed against him were unreasonable, *e.g.*, not a function of whatever expense Respondents incurred in responding to Petitioner's allegedly improper (albeit still unspecified) conduct.

Next, the Michigan Court Of Appeals affirmed the award of

sanctions against Petitioner based on grounds never raised in or addressed by the trial court. Specifically, that intermediate appellate court held that Petitioner, who had been sanctioned by the trial court for purportedly signing pleadings that he never signed or authored, could be sanctioned under MCR 2.114(D) for improperly signing papers other than pleadings. That appellate court, however, effectively refused to identify, and did not—because it could not—identify any specific paper signed by Petitioner that was, in and of itself, sanctionable.

Similarly, the Michigan Supreme Court affirmed the sanctions award against Petitioner without ever identifying the purportedly improperly signed motions and affidavits filed by Petitioner that supposedly warranted sanctions against him.

Petitioner has, therefore, been repeatedly denied an opportunity to be heard regarding the propriety of the basis and amount of sanctions against him. Specifically, Petitioner is entitled to know what it was that he purportedly filed that warranted sanctions. *See, e.g., Coltrade International, Inc.* v. *U.S.*, 973 F.2d 128, 131 (2d Cir. 1992)(specific findings should identify the particular papers signed by counsel). Furthermore, once those papers are identified, Petitioner is entitled to an opportunity to rebut allegations regarding the impropriety of filing those papers and to challenge the consequential expense allegedly incurred by Respondents.

Absent such an opportunity, Petitioner is denied his right to due process of law.

Thus, if the instant case is allowed to stand unchanged, Michigan courts will be permitted to impose sanctions for the "filing" of improperly signed papers without ever identifying the offending paper or providing the sanctioned party with an opportunity to rebut allegations of wrongdoing and of consequential expense. Such a situation is violative of fundamental principles of due process, conflicts with countless decisions of this Court, and should be addressed by this Court.

II.

PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SANCTIONED FOR CONDUCT THAT HE COULD NOT REASONABLY HAVE KNOWN IN ADVANCE TO BE PROHIBITED.

It is a well established principle that due process of law requires that a person know in advance what questionable behavior is prohibited. *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972). The reason for such a rule is clear: in order for a person to be deprived of life, liberty, or property, he must first have reasonable prior notice that the conduct in which he is engaged is prohibited.

The application of this legal principle to the sanctions arena is logical. Sanctions, like criminal penalties, punish the offender for specified conduct that is known to be prohibited. Just as the law does not punish a person for conduct that was not prohibited at the time the conduct occurred, the law should not sanction an attorney for conduct that the attorney could not reasonably have known to be prohibited.

Petitioner was sanctioned for "representing" Plaintiff and for purportedly filing or signing in 1989 unspecified, but allegedly improper, motions and affidavits. Assuming, *arguendo*, that Petitioner did improperly sign and file motions and affidavits in 1989, Petitioner—like all Michigan lawyers and judges—had no knowledge or notice in 1989 that the mere representation of a party, or, for that matter, filing or signing of motions, affidavits or other non-pleadings could result in sanctions under the applicable Michigan Court Rule.

The pertinent Michigan Court Rule states in relevant part as follows:

> **(D) Effect Of Signature.** The signature of an attorney or party, whether or not the party is represented by an attorney,

constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions For Violation. If a ***pleading*** is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

MCR 2.114(D) and (E) (emphasis supplied). The foregoing rules clearly speak in terms of pleadings and do not address any other papers, which are addressed solely by MCR 2.114(C). Thus, the rule, on its face, did not appear in 1989 to permit sanctions for the filing or signing of anything other than pleadings.

Yet, in its August 3, 1993 Opinion, the Michigan Supreme Court ruled, for the first time, that a lawyer could be sanctioned under MCR 2.114 for filing or signing improperly signed papers other than pleadings. Prior to that ruling, but not until after the trial court's 1989 unwarranted imposition of sanctions against Petitioner, a split of authority had arisen in the Michigan Court Of Appeals on this issue. That is, while one panel of that Court held that sanctions could issue for improperly signing papers other than pleadings, *Morris* v. *Detroit*, 189 Mich.App. 271, 472 NW2d 43 (1991), a later panel held that such sanctions could not be imposed

for such an act. *Richmond Twp.* v. *Erbes*, 195 Mich.App. 210, 49 NW2d 504 (1992).

Thus, while Petitioner was purportedly sanctioned for filing or signing improperly signed motions and affidavits in 1989 (although such "offending" papers have yet to be identified), a reasonable person could not have known in 1989 that such actions were sanctionable under MCR 2.114. Indeed, after 1989, Michigan appellate panels first addressed—and split over—this issue, leading to a resolution by the Michigan Supreme Court in 1993.

Because Petitioner could not in 1989 have reasonably known that "representation", "filing" or signing of non-pleadings was sanctionable, Petitioner's right to due process of law was violated—by sanctioning him in 1989 for conduct that was not prohibited by law until later dates.

To permit this result to stand unexamined is to condone that which is squarely at odds with the fundamental constitutional safeguards this Court has consistently protected.

III.

PETITIONER WAS DENIED DUE PROCESS OF LAW BECAUSE THE AWARD OF SANCTIONS AGAINST HIM WAS AFFIRMED WITHOUT ANY CONSIDERATION OF PETITIONER'S ALTERNATIVE ARGUMENTS.

A party who is entitled to appeal, but who is prevented from doing so, is deprived of the right to due process of law. *Chapman* v. *Texas*, 242 F.Supp. 378 (D.C. Tex. 1965).

The Michigan Court Of Appeals, on Petitioner's appeal as of right, effectively refused to address Petitioner's various alternative arguments that established the impropriety of the award of sanctions against him. By way of illustration and not limitation, those alternative arguments included the following:

(a) The trial court made no specific findings of fact concerning either what in Plaintiff's pleadings violated MCR 2.114(D) or what Petitioner specifically did—other than represent Plaintiff—to warrant sanctions against Petitioner.

(b) Plaintiff's Complaint and First Amended Complaint alleged numerous uncontested factual allegations, and other genuine factual allegations were supported by affidavits signed by six independent witnesses based upon their personal knowledge; even if dismissal of Plaintiff's pleadings were not improper, an issue that Plaintiff never pursued, sanctions were unwarranted given cognizant legal theories and supporting affidavits of fact.

(c) Respondents failed to demonstrate any obligation on their part to pay attorney fees for their legal representation in this matter[3] and, therefore, failed to prove what expense was "reasonably necessary" to respond to Petitioner's alleged, but unspecified, misconduct.

(d) Defendants-Appellees failed to prove mitigation of their purported damages.

(e) The trial court failed to hold any evidentiary hearing or make any fact findings necessary to reach the legal conclusions that MCR 2.114(D)(1), (2) or (3) were violated, let alone what specifically the violation was.

(f) Sanctions were inappropriate merely because some or all of Plaintiff's claims were subject to a waivable affirmative defense, i.e. Plaintiff's alleged release of the liability of Respondent Eddie M. Morris.

A conclusion favorable to Petitioner on any one of those issues

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[3]Respondent Eddie Morris was represented *in pro per* and by Ken McConnell. Respondents Edsel Morris and Donna Piotrowski were represented by Kenneth J. Morris, who is Edsel's brother and Donna's uncle. In arguing the Motion for sanctions on December 18, 1989, counsel Ken McConnell conceded that his hourly rate of $250 "is grossly exorbitant..." Transcript of December 18, 1989 hearing at p. 134. Appendix C-6 at p. C-6.4.

would have resulted in the reversal of the award of sanctions against Petitioner.

The Michigan Court Of Appeals' failure and effective refusal to address those substantive arguments of Petitioner destroyed Petitioner's appellate rights and, thus, denied Petitioner his right to due process of law.

Thus, where the right to appeal exists, the appellate court must hear and decide the alternative, dispositive arguments raised by an appellant in order to protect that party's right to due process of law. An appellate court's affirmance in the absence of considering all dispositive arguments of an appellant is a denial of access to the courts, a constitutional right.

IV.

THE TRIAL AND APPELLATE COURTS' ACTIONS VIOLATED PETITIONER'S FIRST AMENDMENT RIGHTS AND CREATE AN IMPERMISSIBLE CHILLING EFFECT ON LEGITIMATE EXPRESSION.

Litigation itself is a form of expression protected by the First Amendment to the United States Constitution. *In re Halkin*, 598 F.2d 176 (D.C. Cir. 1979). The violation of that federally protected right in the instant case has two prongs: Petitioner has been harmed not only in his role as an advocate, but also in his role as a litigant, given that Respondents' request for sanctions sought and resulted in damages from Petitioner himself. In reviewing the instant Petition, then, this Court should be mindful that the state courts' conduct complained of impacted not only Petitioner's client's right of access to the courts, but Petitioner's right of access to the courts as well.

This right of access to the courts is "deeply embedded" in federal constitutional law. *People* v. *Carter*, 678 F.Supp. 1484 (D.

Colo. 1986). *See also Gulf, Colorado & San Francisco Railway* v. *Ellis*, 165 U.S. 150 (1897). It is subsumed under the First Amendment right to petition the government for redress of grievances, but is also derived from the due process clause of the Fifth and Fourteenth Amendments and the privileges and immunities clause of the Fourteenth Amendment. *Simmons* v. *Dickhaut*, 804 F.2d 182 (1st Cir. 1986).

While there is no constitutional right of access to the courts to prosecute actions that are frivolous or malicious, *Tripati* v. *Beaman*, 878 F.2d 351 (10th Cir. 1989), the harm visited upon Petitioner does not dissipate even if it is assumed, *arguendo*, that Plaintiff's Complaint, First Amended Complaint and other pleadings were frivolous or scandalous. So, this Petition transcends the issue of whether or not any pleadings or papers were truly sanctionable, and goes instead to the question of whether Petitioner was afforded the procedural and substantive safeguards which are constitutionally compelled in order to protect fundamental rights. The Michigan Court Of Appeals and Michigan Supreme Court have effectively ignored those safeguards on the irrationality that sanctions were properly assessed because some unidentified papers somehow violated MCR 2.114(D). Clearly, the procedures employed and the substantive results of those procedures fall far short of that which is constitutionally compelled.

The right of access to the courts is substantive, rather than procedural, and its exercise can be shaped and guided by the State but cannot be obstructed regardless of the procedural means employed. *Morello* v. *James*, 810 F.2d 344 (2nd Cir. 1987). Put in other terms, "if the Federal Constitution prohibits a State from taking certain action 'regardless of the fairness of the procedures used to implement them,' the constitutional violation is complete as soon as the prohibited action is taken". *Daniels* v. *Williams*, 474 U.S. 327, 328 (1986)(Stevens, J., concurring)(citations omitted).

It accordingly follows that, regardless of whether Petitioner were deemed to technically have been afforded the opportunity for a hearing before the imposition of sanctions, this window dressing of

"the fairness of the procedures used" does not absolve the state courts of their violations of Petitioner's fundamental rights through the state courts' repeated failures to specify exactly what papers Petitioner was being punished for having signed and how compensatory damages equalled $11,500.

Similarly, if the intermediate appellate court provided a veneer of fairness by appearing to consider Petitioner's appeal, that court obstructed Petitioner's access to the courts by affirming the award of sanctions on the basis of grounds never raised in or addressed by the trial court. To compound the injury, that same intermediate appellate court also failed to address the alternative, dispositive arguments advanced by Petitioner.

And, the Michigan Supreme Court added insult to injury by ratifying that result, and then compounded the injury by punishing Petitioner in 1993 for yet unspecified behavior which occurred in 1989 and which Petitioner could not have known then was sanctionable.

Perhaps the State trial and appellate courts rationalized their results by concluding that (Petitioner's valid alternative dispositive arguments notwithstanding) the imposition of sanctions against someone is a permissible resolution of this dispute—even if that someone bears no culpability—in light of the courts' interest in curbing the proliferation of Plaintiff's allegedly frivolous litigation. However, in fashioning a remedy to stem the flow of frivolous litigation, courts must take great care not to unduly impair a litigant's, even a lawyer's, constitutional right of access to the courts. *Urban* v. *United Nations*, 768 F.2d 1497 (D.C. Cir. 1985). No such care was taken by the trial court in this matter, nor by the Michigan Court Of Appeals or the Michigan Supreme Court. This Court should review this decision lest state courts' desires to curb what is deemed to be frivolous litigation override their constitutional obligation to safeguard fundamental rights of citizens and lawyers alike.

Review of the Michigan Supreme Court's decision is also warranted to prevent the "chilling effect" which would necessarily

follow were that decision permitted to stand. As interpreted by the Michigan Supreme Court, MCR 2.114(D) "forbids...the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application". *Zwickler* v. *Koota*, 389 U.S. 241 (1967). Given that the effect of this case—if uncorrected—would be to chill the legitimate expression of litigants and their counsel as well, the dangers of permitting it to stand should be readily apparent, and this Court should grant certiorari.

V.

THE MICHIGAN SUPREME COURT'S INTERPRETATION OF MCR 2.114(D) VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AND FREEDOM OF SPEECH BY IGNORING THE MAXIM THAT EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

The Michigan Supreme Court's decision in this case turned on its conclusion that the Court of Appeals correctly applied MCR 2.113(A) to MCR 2.114(D) and (E). 443 Mich. at 109. However, MCR 2.113(A) states only:

> **(A) Applicability.** The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules.

The notes following MCR 2.114 suggest that "[a]lthough the rule uses the term 'pleading', it also applies to other papers". This is not an authoritative construction of the rules, however, as the Note to MCR 1.101 specifically disclaims:

> The notes that follow each rule were prepared by the Supreme Court staff to assist the reader in identifying the substantive changes that the rules make from prior Michigan practice. **They have not been approved by the Supreme Court, and**

should not be considered an authoritative construction of the rules. (emphasis added).

As a matter of due process, had the Michigan Supreme Court intended MCR 2.113(A) to apply to the sanctions provisions of MCR 2.114, it would necessarily have had to have so specified. The maxim that *"expressio unius est exclusio alterius"*, *see, e.g.*, *People* v. *One 1941 Ford 8 Stake Truck*, 159 P.2d 641, 642 (Cal. 1945), is particularly apposite in this case, where the unwarranted holding that MCR 2.113(A) applies to the sanctions provisions of MCR 2.114 without expressly so stating operates to trample fundamental rights. The Michigan Supreme Court's interpretation of MCR 2.114 is repugnant to the United States Constitution.[4]

---

[4]Pursuant to Rule 29.4(c) of the Rules of the Supreme Court of the United States, this Petition for a Writ of Certiorari has been served upon the Attorney General for the State of Michigan in that 28 U.S.C. §2403(b) may be applicable.

CONCLUSION

This simple case deserves this Court's attention for a number of compelling reasons, and the subtlety of those reasons should not obscure the gravity of the harm. The amount in controversy may not be large, and Petitioner's pecuniary loss would not be devastating if the decision sought to be reviewed were to stand. But the issues at stake go to the very bedrock of our federalism, as fundamental due process rights have been ignored and rights to free expression chilled.

The highest court of Michigan has ratified and expanded a series of decisions by its lower courts which never satisfied basic constitutional requirements.[5] In the context of the First and Fourteenth Amendments, as this Court is well aware, even "almost" is not acceptable. The result-oriented decision which may seem to advance the State's interest in curbing frivolous litigation at the expense of federally-protected rights should not go unreviewed.

---

[5]The trial judge implicitly acknowledged that his resolution of the sanctions issue skirted the necessary hearing requirements and was the product of guesswork:

> And I ordered a certain — I cut them [the sanctions] way down, primarily because *I didn't want to have a hearing* on every item. And I cut it down so much that if they do come in, they could *probably* at least make out a prima facie case for substantially more than what the Court ordered.

Transcript of February 23, 1990 Hearing at p. 14. *See* Appendix C-8 at p. C-8.10 (emphasis added).

Perhaps it was the trial judge's recognition of these fatal shortcomings which led him to advise Petitioner's counsel at a later hearing that Petitioner "may want to go to the U.S. Supreme Court before this [case] is over". *See* Transcript of March 23, 1990 Hearing at p. 17, Appendix C-9, at p. C-9.11.

REQUEST FOR RELIEF

Based upon the foregoing, Petitioner respectfully requests that this Court issue an appropriate Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted,

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GARRATT LAW FIRM
Attorneys for Petitioner
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Suite 375
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(810) 645-1450

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APPENDIX A-1
A-1.1
Michigan Supreme Court Order, 12/2/92

ORDER

Entered: December 2, 1992

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

94029
& (50)
(54)
(58)
(61)

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC: 94029
COA: 127013, 129292
LC: 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

On order of the Court, the application for leave to appeal, the motions to remand, and the motions for sanctions are considered, and they are DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

71124

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ December 2, 1992 /s/ Corbin R. Davis
Clerk

APPENDIX A-2

A-2.1

Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

[105]Docket No. 94029. Decided August 3, 1993. On application by the respondent for leave to appeal, the Supreme Court, in lieu of granting leave, affirmed the judgments of the Court of Appeals and the circuit court.

Elizabeth A. Bechtold brought an action in the Wayne Circuit Court against Eddie M. Morris, her former spouse, and others. The complaint and amended complaint were signed by the plaintiff alone. Later she was represented by C. William Garratt, who signed and filed papers on her behalf. The court, Charles Kaufman, J., dismissed the case and imposed sanctions under MCR 2.114, finding that the papers filed by the plaintiff and her lawyer contained false and scandalous allegations stated for the improper purpose of harassment and vexation, that the papers were not well founded in fact, and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and ordered both the plaintiff and her lawyer to pay sanctions. Later, the court directed that the sanctions be paid by the lawyer alone. The Court of Appeals, MURPHY, P.J., and CAVANAGH and CONNOR, J.J., affirmed in an unpublished opinion per curiam (Docket Nos. 127013, 129292). The Supreme Court denied leave to appeal, 441 Mich 887 (1992). Garratt seeks reconsideration of that denial.

In an opinion per curiam, signed by Chief Justice CAVANAGH, and Justices BRICKLEY, BOYLE, RILEY, GRIFFIN, and MALLETT, the Supreme Court *held*:

Sanctions may be imposed under MCR 2.114 against a lawyer who files an improperly signed paper, even if it is not a pleading. The rules pertaining to the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by the court rules.

Affirmed.

Justice LEVIN would deny reconsideration.

C. William Garratt, in propria persona.

Morris & Doherty (by *E. Michael Morris*, in propria persona).

APPENDIX A-2
A-2.2
Michigan Supreme Court Per Curiam Opinion, 8/3/92

443 MICH 105

[106]PER CURIAM. Under MCR 2.114, the circuit court imposed sanctions on a lawyer representing the plaintiff. Despite the attorney's argument that sanctions can be ordered only against a person who files a "pleading" as defined in MCR 2.110(A), the Court of Appeals affirmed. We likewise affirm, because the rules on the signing of pleadings apply to all motions, affidavits, and other papers provided for by the court rules. MCR 2.113(A).

I

In April 1989, the plaintiff sued her former spouse. Later, she filed an amended complaint in which she named her former spouse's father and sister as codefendants.

The complaint and first amended complaint were signed by the plaintiff alone. No lawyer's signature appeared on these papers. Later, however, she was represented by attorney C. William Garratt,[1] who signed and filed papers on her behalf.

The plaintiff's pleadings contained numerous allegations of misconduct on the part of the three codefendants. To a great extent, however, the plaintiff's claims concerned matters that had been resolved in the divorce action between the plaintiff and her former spouse. The defendants therefore moved for summary disposition, and for the imposition of sanctions under MCR 2.114.

The circuit court dismissed this suit, and imposed sanctions under MCR 2.114. The court ex-

[107]plained that the papers filed by the plaintiff and her lawyer "contain[ed] false and scandalous allegations, stated for the improper purpose of harassment and vexation ...." The court also found that the papers "were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law."

---

[1]Mr. Garratt was the plaintiff's employer. Her ex-spouse is a lawyer who was formerly in practice with Mr. Garratt. Before the plaintiff filed this suit, Mr. Garratt had filed in Oakland Circuit Court a complaint against the plaintiff's ex-spouse; the complaint contained many of the allegations found in the present suit. That suit was later dismissed.

APPENDIX A-2
A-2.3
Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

The circuit court ordered the plaintiff and her lawyer to pay sanctions to the defendants in the total amount of $11,500. Later, the court modified its order to direct that the sanctions be paid by the lawyer, and not personally by the plaintiff.[2]

Mr. Garratt appealed to the Court of Appeals, which affirmed the imposition of sanctions.[3] This Court later denied leave to appeal. 441 Mich 887 (1992).

The plaintiff's lawyer, Mr. Garratt, has moved for reconsideration of the order in which we denied leave to appeal.

II

The principal question raised in the motion for reconsideration is whether sanctions under MCR 2.114 can be imposed against a lawyer who has not signed a "pleading" as defined in MCR 2.110(A).[4]

[108]This question arises because MCR 2.114(D)[5] and

---

[2]The circuit court also appointed a receiver for Mr. Garratt in order to facilitate payment of the sanctions. The Court of Appeals later set aside the appointment of the receiver because "the facts of the instant case do not present an extreme case which requires the appointment of a receiver" and because Mr. Garratt had posted a $15,000 cash bond. Unpublished opinion per curiam of the Court of Appeals, decided February 7, 1992 (Docket No. 129292).

[3]Unpublished opinion per curiam of the Court of Appeals, decided February 7, 1992 (Docket No. 127013).

[4]That definitional provision states that a "pleading" means only a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to one of those four types of pleading, and a reply to an answer.

[5]Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E)[6] refer to pleadings, and not to other papers filed in a case. Since the plaintiff's complaint and amended complaint were filed *in propria persona*, the lawyer did not file a pleading in this case. Mr. Garratt thus argues that he is not subject to sanctions under MCR 2.114(D) and (E).

The lawyer urges adoption of the analysis found in *Richmond Twp* v *Erbes*, 195 Mich App 210, 224-225; 489 NW2d 504 (1992). There, the Court of Appeals agreed that sanctions under MCR 2.114(D) and (E) can be applied only to a person who has filed a "pleading," as defined in MCR 2.110(A).

In other opinions, however, the Court of Appeals has recognized that MCR 2.113(A) provides that "[t]he rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules." For that reason, sanctions can be imposed against a lawyer who files an improperly signed paper, even if it is not a pleading. *Morris* v *Detroit*, 189

[109]Mich App 271, 280; 472 NW2d 43 (1991). See also *Warden* v *Fenton Lanes, Inc*, 197 Mich App 618, 625-627; 495 NW2d 849 (1992);[7] *People* v *Herrera*, 199 Mich App 425, 427; — NW2d — (1993).[8]

---

[6]Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The court may not assess punitive damages.

[7]*Warden* was authored by Judge MCDONALD, who concurred in *Richmond Twp*. He stated in *Warden* that "upon a more thorough examination of the issue as presented in this case, I believe the *Richmond* case wrongly decided this issue." 197 Mich App 627, n 2.

[8]Though recognizing the correct disposition, the *Warden* and *Herrera* panels were obliged to follow *Richmond Twp*. See Administrative Order No. 1990-6, 436 Mich lxxxiv; Administrative Order No. 1991-11, 439 Mich cxliv; Administrative Order No. 1992-8, 441 Mich, pamphlet 2, p lii.

APPENDIX A-2
A-2.5
Michigan Supreme Court Per Curiam Opinion, 8/3/92

BECHTOLD v MORRIS

The Court of Appeals correctly decided the present case. After quoting MCR 2.114(D) and (E), the Court properly applied MCR 2.113(A), as explained in *Morris*. 189 Mich App 280. We therefore grant the motion for reconsideration, and affirm the judgments of the Court of Appeals and the circuit court.[9] MCR 7.302(F)(1).

CAVANAGH, C.J., and BRICKLEY, BOYLE, RILEY, GRIFFIN, and MALLETT, J.J., concurred.

LEVIN, J. I would deny reconsideration.

---

[9]We have considered the other arguments offered by Mr. Garratt in his motion for reconsideration, and we find that they do not merit discussion. The motion for consolidation with *Warden*, now pending in this Court on an application for leave to appeal that does not concern sanctions under MCR 2.114, is denied.

APPENDIX A-3
A-3.1
Michigan Supreme Court Order, 9/7/93

ORDER

Entered: September 7, 1993

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

94029 (80)

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC 94029
CoA 129292
LC 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

On order of the Chief Justice, the motion by respondent-appellant for leave to file papers instanter is considered and, it appearing that appellant's motion for rehearing was filed August 26, 1993, IT IS HEREBY ORDERED that the time for filing for rehearing by respondent–appellant be extended to August 26, 1993.

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ September 7, 1993 /s/ Jacqueline B. MacKinnon
[/s/ Deputy] Clerk

APPENDIX A-4

A-4.1

Michigan Supreme Court Order, 9/14/93

ORDER

Entered: September 14, 1993

Michigan Supreme Court
Lansing, Michigan

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

Rehearing No. 292

ELIZABETH A. BECHTOLD,
Plaintiff,

v

SC 94029
CoA 129292
LC 89-909989

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants–Appellees,

v

C. WILLIAM GARRATT,
Respondent–Appellant.

In this cause a motion for rehearing is considered and, it is hereby DENIED.

[seal of the Michigan Supreme Court – Lansing]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

/d/ September 14, 1993 /s/ Corbin R. Davis

Clerk

APPENDIX B-1
B-1.1
Michigan Court of Appeals Order, 2/28/90

COURT OF APPEALS, STATE OF MICHIGAN

ORDER

ELIZABETH A BECHTOLD v C WILLIAM GARRATT

Docket #126143
L.C.# 89-909989-CZ

Thomas J. Brennan
Presiding Judge
Harold Hood
Maureen P. Reilly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court further orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

The Court further orders that the motion for stay is DENIED.

[seal of the State of Michigan Court of Appeals]

A true copy entered and certified by Norbert G. Jaworski, Chief Clerk, on

/d/ February 28 1990
Date

/s/ Norbert G. Jaworski
Chief Clerk

APPENDIX B-2
B-2.1
Michigan Court of Appeals Per Curiam Opinion, 2/7/92

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH A. BECHTOLD,
Plaintiff,

February 7, 1992

v

Nos. 127013; 129292

EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI,
Defendants-Appellees,

v

C. WILLIAM GARRATT,
Respondent-Appellant.

Before: Murphy, P.J., and Cavanagh and Connor, J.J.

PER CURIAM.

This case is a consolidated appeal. In Docket No. 127013, respondent C. William Garratt appeals as of right the trial court's imposition of $11,500 in sanctions against Garratt under MCR 2.114 and MCR 2.625. In Docket No. 129292, Garratt appeals as of right the trial court's appointment of a receiver over his assets.

Plaintiff Elizabeth Bechtold, as a secretary and paralegal, and defendant Eddie Morris, as an attorney, were employed together at a small law firm operated by Garratt. In August, 1981, plaintiff and Morris married, and in April 1987, they divorced. Following their divorce, plaintiff and Morris continued to work together with Garratt until August 1988, when Morris began employment elsewhere.

On April 20, 1989, plaintiff filed a complaint against Morris, alleging that, although their divorce was concluded in April 1987, Morris engaged in wrongful acts and omissions both during and after the divorce which were contrary to his express promises and

that he interfered with plaintiff's employment relationship with Garratt.

On November 17, 1989, plaintiff filed an amended complaint, adding Edsel Morris, Eddie Morris' brother, and Donna Piotrowski, Eddie Morris' sister, as defendants. This complaint set forth many of the same allegations as the April 20, 1989 complaint and also contained allegations that Eddie Morris violated portions of the Elliott-Larsen Civil Rights Act and that defendants conspired together to defraud plaintiff of her interests in some marital assets. Both the initial complaint and the first amended complaint were signed by plaintiff in pro per.

Defendants subsequently moved for summary disposition under MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR 2.116(C)(10), and sanctions against plaintiff and Garratt under MCR 2.114. Following a hearing held December 18, 1989, the trial court granted defendants' summary disposition motions and imposed $11,500 in sanctions against plaintiff and Garratt jointly and severally.

On February 23, 1990, the trial court denied Garratt's motion for modification, stay, and rehearing regarding the imposition of sanctions. Additionally, on February 23, 1990, the trial court entered an order dismissing the claims against defendants and vacating the portion of the December 18, 1990 order imposing sanctions against plaintiff. This order stated, however, that the imposition of sanctions against Garratt remained in full force and effect.

On March 1, 1990, the trial court entered an ex parte order requiring Garratt to submit to a judgment debtor examination and appointing Kenneth McConnell as a receiver over Garratt's assets.

On May 11, 1990, the trial court entered an order staying the entire matter pending Garratt's appeal to this Court provided that Garratt post a $15,000 cash bond. Garratt subsequently posted this bond.

APPENDIX B-2
B-2.3
Michigan Court of Appeals Per Curiam Opinion, 2/7/92

I

Garratt first argues that because he did not sign the complaint or first amended complaint the trial court erred in sanctioning him pursuant to MCR 2.114 and MCR 2.625. We disagree.

MCR 2.114 governs the effect of the party's or attorney's signature and provides, in pertinent part:

> (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the pleading;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees. The Court may not assess punitive damages.

This signature requirement is also applicable to all motions, affidavits, and other papers. MCR 2.113(A); *Morris* v *Detroit*, 189 Mich App 271, 280; 472 NW2d 43 (1991). See also Note, MCR 2.114. The trial court is required to impose an appropriate sanction against the party, the attorney, or both under MCR 2.114(E) if a document covered by MCR 2.114 is signed in violation of the rule. *Morris, supra*, 281.

The facts of the instant case indicate that while Garratt may not have specifically signed the complaint or first amended complaint, he signed various motions and affidavits in support of these frivolous complaints and represented plaintiff at various depositions and at the summary disposition hearing, thereby subjecting himself to the provisions of MCR 2.114. See *Morris, supra*, 280.

Additionally, we find Garratt's reliance upon *Pavelic & LeFlore* v *Marvel Entertainment Group*, 493 US ___, 107 L Ed 2d 438, 110 S Ct 456 (1989) for the proposition that Garratt can only be sanctioned if he signed the complaints misplaced. In *Pavelic*, the United States Supreme Court held that Rule 11 of the Federal Rules of Civil Procedure, which is similar to MCR 2.114, allows for sanctions only against the signer of frivolous pleading, motions, or other papers in violation of Rule 11, and not the law firm from which that individual is a member. *Pavelic, supra*, 443-445. Here, while Garratt did not sign the complaints, he did sign motions and affidavits in support of plaintiff's frivolous claims and clearly represented her.

II

Garratt argues that even if the provisions of MCR 2.114 applied to the instant case, sanctions were inappropriate because plaintiff's first amended complaint satisfied MCR 2.116(C)(8) and the pleadings requirements of MCR 2.114(D). We disagree.

A trial court's finding of fact that MCR 2.114, MCR 2.625(A)(2), and MCL 600.2591; MSA 27A2591 were violated will not be reversed on appeal unless clearly erroneous. *Morris, supra*, 281-282; *In re Goehring*, 184 Mich App 360, 367-368; 457 NW2d 375 (1990). Here, with respect to defendant Eddie Morris, the trial court found that plaintiff's claims against him raised matters that were disposed of by their divorce judgment and property settlement. We do not believe that this finding was clearly erroneous. With respect to defendants Edsel Morris and Donna Piotrowski, the trial court found that plaintiff's claims against them were frivolous because they were added as defendants only in the

hope that discovery would prove that they were conspiring with Eddie Morris to defraud plaintiff. We also do not believe that this finding was clearly erroneous.

III

Garratt also contends that the trial court erred in imposing $11,500 in sanctions because Kenneth McConnell, Eddie Morris, and Kenneth Morris, attorneys for defendants, failed to prove that the hours they expended were reasonably necessary. We disagree.

In imposing sanctions under MCR 2.114, the trial court may require a party to pay the opposing party's reasonable expenses and attorney fees incurred. MCR 2.114(E); *Morris, supra*, 281. McConnell submitted an affidavit stating that he spent twenty-two hours on the instant case. Kenneth Morris submitted an affidavit stating that he spent fifty hours on the instant case. Eddie Morris submitted an affidavit indicating that he spent 141.6 hours on the instant case. A total of 213.60 hours were therefore spent on the instant case by these attorneys. Garratt himself, however, for the purpose of supporting his argument that he adequately researched the merits of plaintiff's complaints, submitted an affidavit stating that he spent more than 250 hours from November 1989 to December 1989 on the instant case.

We find that in light of the fact that Garratt spent more than 250 hours on the instant case, the 213.6 hours spent by McConnell, Eddie Morris, and Kenneth Morris were not unreasonable.

IV

Garratt next argues that the trial court erred in imposing sanctions under MCR 2.114 and MCL 600.2591; MSA 27A.2591 because it failed to make specific findings of fact. We disagree and believe that the December 18, 1989, order imposing sanctions and the trial court's statements at the summary disposition hearing sufficiently sets forth the trial court's findings of fact.

V

Garratt next argues that the trial court erred because it imposed sanctions jointly and severally against plaintiff and Garratt without any division of responsibility. We find this argument to be without merit. This Court has repeatedly upheld sanctions by a trial court which were imposed jointly and severally under MCR 2.114(E) against a party and its attorney. See, e.g., *Porter* v *United Shirt Distributors, Inc*, 176 Mich App 145; 438 NW2d 893 (1990); *Lloyd* v *Avadenka*, 158 Mich App 623, 628; 405 NW2d 141 (1987).

VI

Garratt next asserts that the imposition of sanctions under MCL 600.2591; MSA 27A.2591 violated his due process rights because he did not have notice until the summary disposition hearing of defendants' request for sanctions under MCL 600.2591; MSA 27A.2591, and that he therefore did not have adequate time to prepare a response to this request. We disagree.

Defendants initially moved for sanctions under "MCR 2.114". MCR 2.114(F) specifically states that in addition to sanctions under other subrules to MCR 2.114, a party may be sanctioned under MCR 2.625(A)(2). MCR 2.625(A)(2), in turn, specifically states that a party may be sanctioned under MCL 600.2591; MSA 27A.2591 for pleading a frivolous claim or defense. Pursuant to MCR 2.114(F) and MCR 2.625(A)(2), Garratt had notice that sanctions could be imposed under MCL 600.2591; MSA 27A.2591.

Moreover, since sanctions were imposed under both MCR 2.114 and MCR 2.625(A)(2), it makes little difference if Garratt was given adequate notice of defendants' request for sanctions under MCL 600.2591; MSA 27A.2591 since both MCR 2.114 and MCR 2.625(A)(2) state that the court "shall" impose sanctions where a party pleads a frivolous claim or defense. See *Contel Systems Corp* v *Gores*, 183 Mich App 706, 710, n 2; 455 NW2d 398 (1990).

VII

Garratt also argues that the sanctions were punitive in nature and thus should not have been imposed. This argument is wholly without merit. The trial court specifically stated at a hearing held February 23, 1990, that the sanctions were not punitive.

VIII

On February 23, 1990, plaintiff and defendants entered into a "MUTUAL RELEASE AND SETTLEMENT AGREEMENT" in which plaintiff and defendants released and discharged each other from any and all claims and judgments. The trial court then entered an order on February 23, 1990, vacating the portion of the December 18, 1989, order imposing sanctions against plaintiff. This order, however, specifically stated that the imposition of sanctions against Garratt was still enforceable. Garratt now argues that because plaintiff was relieved from paying sanctions he should likewise be relieved or have his portion reduced. We disagree.

Garratt relies upon MCL 600.2925(d)(b); MSA 27a.2925(4)(b) of the Revised Judicature Act regarding joint tort-feasors for the proposition that he should not have to pay sanctions:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons liable in tort for the same injury or the same wrongful death:
>
> (b) It reduces the claim against the other tort-feasors to the extent of any amount stipulated by the release or the covenant or to the extent of the amount of the consideration paid for it, whichever amount is the greater.

Garratt's reliance upon MCL 600.2925(d)(b); MSA 27A.2925(4)(b) is misplaced. MCL 600.2925(d)(b); MSA 27A.2925(4)(b) specifically refers to "tort-feasors" and persons "liable in tort". In this case, there are no "tort-feasors" or persons "liable in tort". Rather, the present case involves the imposition of sanctions for a frivolous claim. Moreover, the trial court's order

vacating the imposition of sanctions against plaintiff was a modification of the original order imposing sanctions and specifically stated that the order imposing sanctions remained in full force and effect as to Garratt.

IX

Garratt next asserts that because defendants contend that Garratt engineered and wrote the initial complaint and first amended complaint for plaintiff, Garratt was actually an agent of plaintiff, the principal, and that since the principal was absolved of sanctions, he should likewise be absolved of sanctions. We disagree and find that the facts of the instant case suggest no principal-agent relationship whatsoever between plaintiff and Garratt.

X

Garratt next argues that the trial court erred in appointing a receiver over his assets in an attempt to enforce the sanctions. We agree.

The power to appoint a receiver is inherent in courts of equity. A receiver's primary purposes is to preserve property and to dispose of it under the order of the court. *Band* v *Livonia* Associates, 176 Mich App 95, 104; 439 NW2d 285 (1989). The appointment of a receiver, however, is a harsh remedy and should only be used in extreme cases. If less intrusive means are available, a receiver should not be appointed. Only after other approaches to enforce the trial court's orders have failed should a receiver be appointed. *Band, supra*, 105; *Wayne Co Jail Inmates* v *Wayne Co Chief Executive Officer*, 178 Mich App 634, 658-658; 444 NW2d 549 (1989). The decision of a circuit court to appoint a receiver to implement its orders will not be reversed on appeal absent an abuse of discretion. *Wayne Co, supra*, 651.

Here, the trial court imposed $11,500 on December 18, 1989. On February 23, 1990, the trial court denied Garratt's motions for modification, stay, and rehearing. Then, on March 1, 1990, without attempting any less intrusive means of collecting the sanctions,

the trial court appointed Kenneth B. McConnell as a receiver for Garratt. We believe that the facts of the instant case do not present an extreme case which requires the appointment of a receiver. Moreover, since Garratt posted a $15,000 cash bond, a receiver is no longer necessary. We therefore vacate the portion of the March 1, 1990, order appointing Kenneth McConnell as a receiver.

Since we have vacated the portion of the March 1, 1990, order appointing a receiver, Garratt's remaining issues regarding a receiver need not be addressed.

XI

As a result of Garratt's representation of a plaintiff in a separate and unrelated case from the United States District Court for the Eastern District of Michigan, Kenneth McConnell held $5,146.20 in escrow for the benefit of Garratt & Evans, P.C. In an order entered March 1, 1990, the trial court stated that this $5,146.20 was to be paid to defendants by McConnell as partial satisfaction of Garratt's obligation to pay defendants sanctions. Garratt now argues that the trial court erred in ordering that this fund be paid to defendants because this fund belonged to the law firm of Garratt & Evans, P.C., and not Garratt personally.

While we have no opinion regarding the merits of Garratt's argument, we believe that since Garratt posted at $15,000 cash bond to satisfy the sanction requirement, there is no need for this fund to be paid to defendants as partial satisfaction. We therefore vacate this portion of the March 1, 1990 order.

In Docket No. 127013, we affirm the trial court's imposition of sanctions against Garratt.

In Docket No. 129292, we vacate the portions of the March 1, 1990, order appointing a receiver over Garratt's assets and requiring $5,146.20 in the trust account of McConnell to be paid to defendants.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Michael J. Connor

APPENDIX B-3
B-3.1
Michigan Court of Appeals Order, 5/11/92

Court of Appeals, State of Michigan

ORDER

ELIZABETH A. BECHTOLD v EDDIE M. MORRIS

William B. Murphy
Presiding Judge
Mark J. Cavanagh
Michael J. Connor
Judges

Docket # 127013 & 129292
L.C. # 89-909989-CZ

The Court orders that the motion for rehearing is DENIED.

/s/ William B. Murphy
Presiding Judge

[seal of the State of Michigan Court of Appeals]

A true copy entered and certified by Ella Williams, Chief Clerk, on

/d/ MAY 11 1992
Date

/s/ Ella Williams
Chief Clerk

APPENDIX C-1
C-1.1
Trial Court Order, 12/18/89

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

-vs-

EDDIE M. MORRIS,
EDSEL MORRIS, and
DONNA PIOTROWSKI,
Defendants.

Case No. 89-909989-CZ

HON. CHARLES KAUFMAN

ELIZABETH A. BECHTOLD
Plaintiff, In Pro Per

KENNETH B. MCCONNELL (P17326)
Of Counsel to Eddie M. Morris

E. MICHAEL MORRIS (P31547)
Defendant, In Pro Per
2000 N. Woodward Avenue, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1106

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER RE SANCTIONS

At a session of said Court,
held in Detroit, Michigan,

on /d/ DEC 18 1989

PRESENT: HON. CHARLES KAUFMAN
Circuit Judge

APPENDIX C-1
C-1.2
Trial Court Order, 12/18/89

Plaintiff having filed a Complaint and First Amended Complaint in this matter; Plaintiff and her counsel, C. William Garratt, having signed pleadings that this court has determined

[2]contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this court also having found that pleadings signed by the Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

IT IS HEREBY ORDERED that based upon the violations by Plaintiff and her counsel, Garratt, of MCR 2.114, and also pursuant to MCR 2.625, sanctions are awarded against both Plaintiff and her counsel, jointly and severally, in the amount of $2500.00 to Kenneth McConnell and $7500.00 to Eddie Morris and $1500.00 to Ken Morris.

IT IS FURTHER ORDERED that the sanctions shall be paid within seven calendar days from the date of this order.

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

/s/ Charles Kaufman
HON. CHARLES KAUFMAN
Circuit Judge

c: MORRIS.7

APPENDIX C-2
C-2.1
Trial Court Order of Dismissal, 2/23/90

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

Honorable Charles Kaufman
Civil Action No.
89-909989-CZ

ORDER DISMISSING CASE WITH PREJUDICE AND MODIFYING DECEMBER 18, 1989 ORDER RE SANCTIONS

At a session of said Court,
held in the City-County Building
Detroit, Michigan on
/d/ FEB 23 1990

PRESENT: HONORABLE CHARLES KAUFMAN
WAYNE COUNTY CIRCUIT JUDGE

Plaintiff and Defendants having stipulated, through their respective counsel, to entry of this Order; and this Court being advised in the premises;

IT IS HEREBY ORDERED that this action is dismissed with prejudice without costs against Plaintiff.

IT IS FURTHER ORDERED that this Court's Order Re Sanctions dated December 18, 1989 be, and hereby is, amended so as to delete any reference to Plaintiff in the preamble and ordering paragraphs; that Order shall be deemed to not apply

[2]to Plaintiff and every portion of that Order that would otherwise apply to Plaintiff is hereby vacated and held for nought insofar as it refers to Plaintiff.

IT IS FURTHER ORDERED that except as expressly modified herein, the December 18, 1989 order remains in full force and effect as to everyone other than Plaintiff Elizabeth A. Bechtold, and shall not be construed as to diminish or compromise liability or release anyone other than Plaintiff Elizabeth A. Bechtold.

/s/ Charles Kaufman
CHARLES KAUFMAN
WAYNE COUNTY CIRCUIT JUDGE

Approved as to form
and substance:

E. Michael Morris
In Pro Per

Kenneth McConnell
Co-Counsel for Defendant Eddie Morris

Kenneth J. Morris
Attorney for Defendants
Edsel Morris and Donna Piotrowski

Mark J. Kriger
Attorney for Plaintiff

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge Deputy Clerk

APPENDIX C-3
C-3.1
Trial Court Order, 2/23/90

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE M. MORRIS, EDSEL MORRIS
and DONNA PIOTROWSKI,
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
300 E. Long Lake, Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

E. MICHAEL MORRIS (P31547)
In Pro Per
2000 N. Woodward, Suite 100
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(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
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(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

ORDER RE: 2/23/90 RULINGS

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on

/d/ FEB 23 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

APPENDIX C-3
C-3.2
Trial Court Order, 2/23/90

C. William Garratt having filed a Motion for Modification, Stay and Rehearing; Defendants

[2]having responded thereto, and having asked for an increase in sanctions due to, among other thing [sic], the continued pursuit of vexatious and spiteful litigation by C. William Garratt.

IT IS HEREBY ORDERED that Garratt's motion be, and hereby is, denied.

IT IS FURTHER ORDERED that Garratt shall *immediately* comply with this Court's Order of December 18, 1989, *forthwith, i.e.*, no later than 4:00 p.m. on February 23, 1990, and pay to Defendants and their counsel the sums referred to in the Court's Order. The Motion For Stay is hereby denied.

[3]This Court shall issue execution if either of the sums stated in this Order are not paid within the time set by the Court.

IT IS FURTHER ORDERED that statutory interest, at the judgment rate of interest, shall run on the amount of sanction amounts from the date of each order granting sanctions.

Approved as to form only

/s/ E. Michael Morris
/s/ Michael Alan Schwartz
/s/ Kenneth J. Morris

/s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

A:10077.OR1

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-4
C-4.1
Trial Court Order, 3/1/90

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE M. MORRIS, EDSEL MORRIS and DONNA PIOTROWSKI,
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
300 E. Long Lake, Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

E. MICHAEL MORRIS (P31547)
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(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR, RESTRAINING TRANSFER OF PROPERTY SUPPLEMENTARY TO JUDGMENT, AND GRANTING OTHER RELIEF

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on
/s/ MAR 1 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

APPENDIX C-4
C-4.2
Trial Court Order, 3/1/90

Upon motion of Defendants for (1) examination of Judgment Debtor pursuant to MCLA 600.6110, (2) an order

[2]restraining the transfer or disposition of assets pursuant to MCLA 600.6116, and (3) appointment of a Receiver, and execution on property pursuant to MCLA 600.6104; and with good cause otherwise appearing for the relief sought by Defendants; and the Court being advised in the premises;

IT IS HEREBY ORDERED that C. William Garratt appear before a court reporter at the offices of E. Michael Morris, P.C., 2000 N. Woodward, Suite 100, Bloomfield Hills, Michigan 48013, at 10:00 a.m. on March 6, 1990, to be examined under oath concerning property, income, assets or other means of satisfying the orders previously entered by this Court in this action; and further, C. William Garratt is hereby restrained from transferring, disposing of, or interfering with any of his property, whether now owned by him, or hereafter acquired by or becoming due him, not exempt from execution, until further order of this Court.

IT IS FURTHER ORDERED that C. William Garratt shall bring with him and produce at said examination all books, papers and records in his possession or control which have or may contain information concerning property, assets, or income.

IT IS FURTHER ORDERED that Attorney Kenneth B. McConnell be, and hereby is, appointed as Receiver for C.

[3]William Garratt with the authority to exercise his discretion to locate and/or dispose of any and all assets which may be used to

satisfy the orders previously entered.

IT IS FURTHER ORDERED that this Court directs that the sum of $5,146.20 currently held in the trust account of Kenneth B. McConnell be paid forthwith to Defendants in this matter as partial satisfaction of the Court's previous order.

/s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-5
C-5.1
Trial Court Order, 5/11/90

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs-

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

EDDIE MR. MORRIS, EDSEL MORRIS
and DONNA PIOTROWSKI,
Defendants.

MARK J. KRIGER (P30298)
Attorney for Plaintiff
1028 Buhl Building
Detroit, MI 48226
(313) 963-1700

MICHAEL A. SCHWARTZ (P30938)
Of Counsel for Respondent
4000 Penobscot Building
Detroit, MI 48226
(313) 963-8080

C. WILLIAM GARRATT (P13858)
Respondent, In Pro Per
300 E. Long Lake, Suite 375
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(313) 645-1450

E. MICHAEL MORRIS (P31547)
In Pro Per
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1106

KENNETH B. MCCONNELL (P17326)
Of counsel to Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

APPENDIX C-5
C-5.2
Trial Court Order, 5/11/90

ORDER RE: 4/13/90 PRONOUNCEMENTS

At a session of said Court, held in the Wayne County Circuit Court, City-County Building, Detroit, Michigan on
/s/ MAY 11 1990

PRESENT: HON. /s/ CHARLES KAUFMAN
CIRCUIT COURT JUDGE

[2]Respondent's motions described below having duly come on for hearing on March 9, 1990 together with Defendants' Response and Objection and Respondent's Replies and supporting brief; and the Court having heard oral argument;

IT IS HEREBY ORDERED that Respondent's Motion for Approval of Stay Bond and Defendant's Objections to Proposed Bond be, and each hereby is, granted in part and denied in part; this Court hereby stays execution of this Court's 3/1/90 Order. Respondent may file a Stay Bond provided that it is as approved by this Court on March 9, 1990 without further written order or pronouncement, namley [sic] a $15,000 cash bond or a $20,000 licensed corporate surety bond; except as set forth above, the other relief sought in Respondent's aforesaid motion is denied.

IT IS FURTHER ORDERED that Respondent's Motion for Relief from "Order Re: Sanctions" and the related relief sought by Respondent at the March 9, 1990 hearing be, and hereby is, denied.

IT IS FURTHER ORDERED that Respondent's Motion to Set Aside or Modify *Ex Parte* "Order for Examination of Judgment Debtor, Restraining Transfer of Property Supplementary to Judgment, and Granting Other Relief" be, and hereby is, granted in part and denied in part. This Court's March 1,

[3]1990 "Order for Examination of Judgment Debtor, Restraining Transfer of Property Supplementary to Judgment, and Granting Other Relief" is hereby stayed in its entirety until 4:30 p.m. on

Monday, March 12, 1990; except as set forth above, Respondent's aforesaid motion is denied. In the event of affirmance by appellate courts of rulings by the trial court, the bond will be looked to as first satisfaction.

/s/ CHARLES KAUFMAN
CIRCIUT [sic] COURT JUDGE

APPROVED AS TO FORM ONLY:

/s/ Eddie M. Morris
DEFENDANT EDDIE M. MORRIS

/s/ Kenneth J. Morris / EMM w/ per
KENNETH MORRIS
ATTORNEY FOR OTHER DEFENDANTS

/s/ C. William Garratt
RESPONDENT C. WILLIAM GARRATT

A TRUE COPY
JAMES R. KILLEEN
CLERK

BY /s/ R. Eldridge
Deputy Clerk

APPENDIX C-6
C-6.1
Transcript, 12/18/89 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS,
EDSEL MORRIS, and
DONNA PIOTROWSKI,
Defendants.

MOTION

Before the Honorable Charles Kaufman, Circuit Judge, on Monday, December 18, 1989, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

C. WILLIAM GARRETT
MARK KRIGER
300 East Long Lake Road
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Plaintiff

KEN MCCONNELL
EDDIE MORRIS
2000 N. Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Defendant, E. Michael Morris

APPENDIX C-6
C-6.2
Transcript, 12/18/89 Hearing

KENNETH J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Edsel Morris and Donna Piotrowski

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

TABLE OF CONTENTS

WITNESS:

None

EXHIBITS:

None

APPENDIX C-6
C-6.3
Transcript, 12/18/89 Hearing

...[132]that release. As far as the question of tender back, I somewhat agree with Mr. Garrett [sic] that not in all cases is it required, but this decision is not based upon a failure to tender back. I'm satisfied that she did do many acts in reliance upon this judgment, did accept some money upon reliance on this judgment and did retain other things that she got in reliance upon the judgment. So the Court would order that this case not only for the things that I just mentioned now, but for all the things that are in all the parties' briefs up to this point, I'm going to grant the motion for summary judgment as to Eddie Morris.

MR. MORRIS: Thank you, your Honor.

THE COURT: Just a minute, I'm not quite done. I'm done. This is yours, Mr. Morris.

MR. MORRIS: Thank you, your Honor. Mr. McConnell has the next motion.

MR. MCCONNELL: If it please the Court, and I know how to be briefer than my client.

THE COURT: I hope so.

MR. MCCONNELL: The matter of sanctions are now to be addressed by me. I'm handing you a two-page summary of the relevant court rule sections and also

[133]the December 1989 summary out of Calahan's Michigan Pleading of Practice. And while I'm doing that, I'm sure that the Court will grant the teaching of the just good old-fashioned memory refreshment, I'll wait until you —

THE COURT: No, go ahead, I've read it.

MR. MCCONNELL: All right. The Court has now ruled that the Plaintiff's Complaint was not properly the subject of having been investigated before it was filed. It was filed in the face of the sound release contained in the Judgment of Divorce. It offered no basis to escape from established existing law or to seek modification of established existing law that releases in court judgments being what

they say, no good faith investigation and Mr. Garrett is a party to this whole thing and has caused it to go on for six weeks, generating more than five pounds of paper and there's been nothing offered by way of the usual careful methodical homework that any person must do before they make charges of this nature. The State Legislature in the section of RJA that's cited at the end of the memorandum, has declared it to be the public policy of Michigan, binding on this Court that frivolous commands the granting of sanctions and it

[134]is defined by the people in Lansing as meaning the party's legal position devoid of arguable legal merit. Now, if you just back up and think of what you've just ruled here, you have, I think, met that standard end this welter of paper of the relief sought was dumped on you and it's all devoid of legal merit. Yesterday as we were plowing through this, because I've been tied up in more interesting matters, I saw Eddie's time records just for October and November, 140 hours. That will be coming into you, Judge Kaufman, in a solemn affidavit that you may rely on that representation for the purposes of doing what should be done here today. When that affidavit comes in, if you find that you want to back up and modify the order that I think you ought to enter today, just haul off and ex parte, shrink it down. I have only 20 hours of time on this matter, thank God. Eddie's rate when he was still with Garrett was being billed out between $125.00 and $135.00 an hour by Garrett. It's now at $150.00 with adjustments, naturally, depending on the circumstances. This kind of annoyance should be charged certainly at that rate. Mine is grossly exorbitant, $250.00, but modify it down because you must not lose sight of the community standard, the objective

[135]community standard which you must apply. You can listen to what my rate is, but modify it so it's fair. You've heard Ken Morris and I trust, he can likewise put an affidavit in showing the represented 50 hours. When you get all through, it seems to me, Eddie's comes out at about $21,000 for his 140 hours, mine might be $5,000.00, but that's a pretty heavy rate, do anything you like

with it, I don't care. Ken Morris, he's had a number of years additional experience, maybe $7,500.00 looking at around $33,000.00. Now, if you do nothing, this irritant will pop up again. Judge Gage had to put up with it up until June of this year and she's going to have to put up with a motion now to set aside the without prejudice part and award sanctions because there was not the disclosure that this bunch of stuff had been filed. It was concealed from her, concealed from us. We would not have consented but for the concealment. But that's Garrett's style, it's well known in the community of legal and I think judicial, also. I would urge that you exercise your God given judgment, award sanction, and if it's gotta be against both of them, both of them, fix a reasonable time for it to be paid, failing which the judgment becomes final and execution can issue. I guess that's all that we —

[136]you can do now. Again, I renew the — I'm handing a proposed order with copies to counsel, found it blank and an original to the Court and if you prefer waiting until you see the affidavits, go right ahead, it doesn't make a bit of difference. But whatever you do will be right. Finally — that cleans up the motion for sanctions Mr. Ken Morris may have something to say about it. I'm now handing you a proposed order with copies to Counsel to release the Eddie Morris converted monies by this Plaintiff that's sitting in your clerk's office and I have narrowed the order from the way my client prepared it last evening. He was going too far, and we've shortened it down, or struck it down to where it belongs, and it may be signed, I think, without any hearing from the other side. They converted that money, the Plaintiff did, in April — in March or April when the business was sold, put it on [sic] her own bank account, used it, then filed this silly lawsuit in April, said they were tendering it to the Court and didn't bother bringing in a court order to pay it into Court and it was your order of December the 4th, that finally got it into the Court. That's just old common law thievery and interest must be afforded. The order should be signed directing it to be paid over forthwith to Eddie, with usual

[137]interest.

MR. MORRIS: Your Honor, all I have to add is I join in the motion for sanctions. It becomes obvious that unless the motion isn't granted, Mr. Garrett is going to try to bang our heads against the wall, and spend $80,000.00 on this case, too.

THE COURT: What was the last thing — I didn't hear the last thing you said.

MR. MORRIS: If the motion isn't granted, your Honor, Mr. Garrett is going to take other measures and try to allow us — make us spend a lot more money before it's over and time. If he can't be discouraged, this will go on for an infinity.

THE COURT: Mr. Kriger?

MR. MCCONNELL: I must make one correction, I in no respect indicated this newly appearing lawyer, (inaudible words) sanctions. He just showed up and he ought to have known better, but he did and he didn't do anything other than try to help this Court a little bit within the framework. But the harm was all done by Garrett, he ought to be (inaudible) for the remedy.

MR. KRIGER: Your Honor, Mr. Garrett will speak as to the sanction motion against him. I would just like to speak on behalf of Elizabeth Bechtold.

[138]Your Honor, I believe that sanctions in this case would be wholly inappropriate. I respectfully disagree with your ruling. I believe that there was substantial evidence on the issue —

THE COURT: See that's a fate accompli. Just argue.

MR. KRIGER: I understand that, but I think it's important to understand why I don't believe that this was a vexatious lawsuit. What I — let me back just back up. I was referred to Mr. Garrett by another attorney and I came and I met with Mr. Garrett and I met with Ms. Bechtold and my first blush, as I indicated earlier to you, was this was another bitter divorce battle where the parties could just not let sleeping dogs lie. But then I said, well, let me look it over and I explored it, and I explored it —

THE COURT: You told me all that.

MR. KRIGER: And then I see — but I see affidavits from people in Garratt's Law Firm, that work at Garrett's Law Firm, and they said Mr. Morris, Eddie Morris, threatened to fire Ms. Bechtold if she didn't sign the releases. Once that fact was established in my mind, I believed that there was

[139]something to this lawsuit. Let me — and maybe I should state and maybe I don't have common sense, but I took the case on a contingency agreement because I believed that if I could get it to a jury, that I could get something from a jury. That if the jury believed that he put this woman through this kind of trauma, the suicide and everything else — attempt — and everything else that occurred, that they would award her some kind of damages. I believed there was merit to such an extent and obviously this Court disagrees as to the merit of the lawsuit, that I took it on a contingency fee. I don't believe that the Court can say that this case was completely without merit. Not when we have affidavits from people in the office that some threats made by Eddie Morris on the termination of employment. Not when we have an attorney signing an affidavit that indicates she was under complete emotional distress, wouldn't even allow us to make motions to compel interrogatories. Based — and I'm not going to talk too much longer, your Honor, based on those things, and the fact that Ms. Bechtold has been through the ringer, I believe — it would be appropriate to impose any sanctions on Miss Bechtold. If the Court has any questions, I'd

[140]be more than happy to try to answer them. I mean, she's been through enough, I don't think it would serve any purpose to impose sanctions upon her.

MR. GARRETT: First, your Honor, with regard to the request for sanctions, I believe I am correct, but I'm not sufficiently familiar with all the papers that the Court has been deluged with to be certain that I'm correct in saying that the request for sanctions is premised, according to the pleadings, on MCR 2.114(D) and (E). It

is not premised, to my recollection, upon the State Statute and to the extent that this attempt by them to amend the motion to make me respond to allegations that I could not reasonably be expected to have responded to, I object. Next, let's look at the court rules, because the court rule and the statute are different. The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of a legal sense, it's not based upon existing law or a reasonable argument for the extension modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.

THE COURT: Let me just correct you on the one thing. You said that the Statute is discretionary.

[141]I'm sorry, you said the rule is discretionary. It's not.

Mr. Garrett: I'm sorry, I stand corrected.

The Court: The Rule says this, if a pleading is signed in violation of this Rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.

Mr. Garrett: I'm sorry, I'm sorry —

The Court: No, it's mandatory — I knew it was mandatory, that's what [sic] I looked at it.

Mr. Garrett: You're right, and the distinction I should have made is that the standard for imposition are different between the Statute and the court rule and the amounts to be imposed are different under the Statute and the court rule. The Statute talks about how you compute the amount, the court rules doesn't. The court rule says that you know, you can throw somebody in jail if they — if you find that they violated 2.114(D) and (E). That is not one of the alternatives specified by the Statute, and the court rule does not specify the types of damages that the Statute does. So, first to the extent that they're attempting to modify their argument to — with reference to the Statute, I object. Second, I believe that the plethora of

[142]affidavits filed in this case establishes that there were substantial facts upon which to ground this lawsuit. Your Honor obviously has found that the lawsuit ought to be dismissed, but only after lengthy argument with regard to primarily the facts. In the course of your Honor's pronouncements, just recently, the only thing specifically that you referred to in terms of the lack of serious allegations were — according to my notes, was that you didn't there [sic] were any serious allegations about Edsel and Donna Piotrowski. Next, in determining whether or not to impose sanctions, I think you have to determine whether or not there was some basis in law or for the reasonable extension or reversal or modification in existing law on which to premise the Complaint. Your Honor, earlier today, inquired as to wasn't it the Plaintiff that cited *Vhama*. In fact, your Honor, it was your Honor that first cited *Vhama*.

THE COURT: I first cited it, but then —

MR. GARRETT: I understand.

THE COURT: — in the brief somebody else cited it.

MR. GARRET: We brought it up —

THE COURT: Sure.

[143]MR. GARRETT: — so what I am suggesting to you is, that based upon the facts that were established by the affidavits of Bechtold, Evans, Garrett, McCarthy (ph), Trepke (ph), Stuart Trepke (ph), the Pontiac Policeman, Eric McCann, Mark Haffley (ph), I think that it's difficult for the Court to conclude that there is not substantial factual basis for the Complaint. In addition, I think you also have to take into consideration the fact that due to the Defendant's refusal to make discovery and their obstruction of discovery, other facts not which we were on a fishing expedition to get but other facts which we could reasonably have obtained from them, but were not available by affidavit; were available to buttress the Complaint. So I believe that based upon the briefs that we filed in support of the case, even if we didn't support this case, even though

your Honor is well aware of the fact that you could have granted the motion for summary disposition, I think that there is ample legal authority for us to contend that there was, if not existing law, a reasonable basis for the extension, modification or reversal of existing law to allow the Complaint to exist. Next, before it slips through the cracks, let me address the, "order directing

[144]clerk to release funds forthwith and granting other releases". I have not had the chance to read the language of the other orders, but I note that it's it's [sic] rather presumptuous for the other side to presume that the Court will make certain findings that the Court hasn't expressly made. And as I now glance at the order, post order regarding sanctions, I — I see the same thing. Here the other side is presuming to know what the Court's going to conclude. I'll let you draw whatever conclusions you want with regard to the order regarding sanctions which you undoubtedly will. But please note that if you subscribe and enter the order directing the clerk to release funds forthwith and granting certain other relief, that amongst other things, you are not only finding an act of conversion occurred, which you haven't found, and which there's been no argument about, but in addition, you're ordering that the Plaintiff pay a statutory rate of interest, whatever that means. I presume they're talking about MCLA 600.6013, the judgment rate of interest, that she pay a statutory rate of interest from a date that precedes the filing of the Complaint. And in addition, by signing that order, you are, in effect, granting the Defendant Eddie Morris,

[145]a summary judgment with regard to matters that are clearly and unequivocally attested by affidavit. Are you finding, as a matter of law, and are you not finding as a matter of law if you enter that judgment, that Eddie Morris didn't breach any of the oral or written obligations that he had with regard to the Northern Michigan property? Because I suggest to you that there is no adequate basis in this record for making such a finding and that by distributing the monies to her, you are, in essence, saying that she could never have her day in Court as to whether the business or the property or their value were diminished by so much as his breaches of

written contracts, including obligations in the property settlement agreement which were not merged in the judgment. So, I suggest to you that if you are, as you obviously are, bound and determined to dismiss this case once and for all, that money that's paid to the Clerk of the Court should not go to Eddie Morris; it ought to go back to her. They are still — she is still entitled to her day in court on the question of whether or not his acts and omissions in breaching agreements concerning the Northern Michigan property caused her damages.

[146]Failure to cooperate in obtaining financing, for example. And I guess what I'm saying is, that the — under the circumstances, I think that order is far too broad. In addition, the order purports to require an accounting.

MR. MCCONNELL: I'll abandon that provision in the last paragraph of the order. I didn't want it in there and it has nothing to do with — strike that.

THE COURT: Yes, I've already stricken it.

MR. MCCONNELL: Good. We think alike.

THE COURT: (inaudible words).

MR. GARRETT: Unless Judge McConnell's statements, your Honor, be treated as the truth, let me indicate to you that contrary to Mr. McConnell's statements at the outset of today, Judge Gage not only did not impose sanctions, she expressly told Eddie Morris and Ken McConnell and me in her chambers on May 2, 1988, that she was not going to impose sanctions with regard to their allegations that they were frivolous pleadings and there is — although there was not a formal court record of that proceeding, at an appropriate time in that case, I made a written verified allegation to that effect which was not denied by them. So, in terms of whether or not

[147]sanctions should be imposed, based upon the record of that case of which I ask you to take judicial notice, I think you ought to follow Judge Gage's lead and decline to impose sanctions. Until I

know whether or not the Court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

THE COURT: First, as to the proffered order directing the clerk to release funds forthwith and granting other relief, what the Court is going to do is order that the $5,439.07 which was filed, will be forthwith released to the Defendant, Eddie Morris and clerk will be directed to pay these funds. On the next paragraph, the Court has deleted certain portions of it. I'm not going to make any specific findings about conversion or anything like that, just that he was due these funds. And I'm just going to order that the Plaintiff pay to Eddie Morris interest at the Statutory rate or these funds from

[148]the date she received said funds to the date of this order. Probably nothing will happen on that aspect of the order, but I'm not going to make any finding, and I'm deleting the last paragraph of that. As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful, and really shouldn't be the basis of bothering the Court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our Courts have defined it. I am going to order that sanctions be ordered. And the sanctions that I'm going to order are the following: To — I realize it's substantially less that the claim but I've got to take into account who's paying these sanctions and what their financial status may be. I'm going to order the following: $2,500.00 to Kenneth McConnell, $7,500.00 to Eddie Morris, and $1,500.00 to Ken Morris.

Mr. Morris: That's fine, thank you.

(Hearing concluded).

[149]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 148, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Monday, December 18, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 11th day of /s/ January , 1990.

APPENDIX C-7
C-7.1
Transcript, 2/2/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS, DONNA PIOTROWSKI, WILLIAM C. [sic] GARRATT, EDSEL MORRIS,
Defendants.

MOTION — VOLUME I

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, February 2, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

MARK J. KRIGER
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Appearing on behalf of the Plaintiff

EDDIE M. MORRIS
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Suite 375
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

KENNEHT [sic] J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Piotrowski and Edsel Morris

APPENDIX C-7
C-7.2
Transcript, 2/2/90 Hearing

[2]MICHAEL ALAN SCHWARTZ
4000 Penobscot Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant, Garratt

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

APPENDIX C-7
C-7.3
Transcript, 2/2/90 Hearing

[3] Detroit, Michigan

Friday, February 2, 1990

THE COURT: Bechtold versus Morris, 89-909989. Hello, Mr. Kriger.

MR. KRIGER: Good morning, your Honor.

MR. MORRIS: Good morning, your Honor.

MR. GARRATT: Good morning, your Honor.

MR. KRIGER: Your Honor, if the Court pleases, Mark Kriger on behalf of the plaintiff, Elizabeth Bechtold. Your Honor, I know the Court has spent an inordinate amount of time on this case and I'll try to be as brief —

THE COURT: Who do you represent?

MR. SCHWARTZ: Your Honor, as my appearance, Michael Alan Schwartz on behalf of C. William Garratt.

THE COURT: I'm sorry, on behalf of who?

MR. SCHWARTZ: On behalf of Mr. Garratt, on question of sanctions.

THE COURT: Well, file it with the clerk where it's supposed to be filed. I don't accept things for filing here.

MR. MORRIS: Your Honor, E. Michael Morris representing myself, in pro per. And there's a preliminary matter that needs to be addressed before oral

[4]argument begins.

MR. MORRIS: Kenneth J. Morris representing Edsel Morris [sic] Donna Piotrowski, your Honor.

MR. MORRIS: Your Honor, the preliminary matter is, under the rule, they're not entitled to oral argument. You gave us four hours —

THE COURT: Not on the rehearing they're not, absolutely.

MR. MORRIS: That's right. And you gave us four hours and you gave us a special day. And I don't think that we should be here for four more hours today.

THE COURT: Well, I never intended to hear any argument on a rehearing or modification.

MR. MORRIS: Thank you. So, there's really four issues that are up for the court as I read them. One is a stay issue, they've asked for a stay. Two is a motion, they want to file a second amended complaint. Three is our request in response to their motions for an increase in sanctions to the amount originally sought. And four is there's an order of dismissal that's floating around, they've filed objections to and filed their own proposed order. We can resolve that today. So, there's really only four issues that are up.

THE COURT: Didn't this go to the Court of

[5]Appeals; and didn't the Court of Appeals make a ruling on the stay or is that some other case?

MR. KRIGER: Some other case.

MR. MORRIS: You've got that confused —

THE COURT: I've got that confused with another case. Okay, good enough.

MR. KRIGER: Your Honor, may I — the Court has always been patient, I understand —

THE COURT: I'm going to be real patient. But let me just preference my patience with this, that I am not going to orally hear any motion for reconsideration. Now, I've made that clear.

MR. KRIGER: All right. Well, that's what I was going to ask —

THE COURT: And that's what — I am not going to hear any oral argument on it because I gave you a lot of consideration, a lot of time. I set a special day, I think; didn't I?

MR. KRIGER: You did.

APPENDIX C-7
C-7.5
Transcript, 2/2/90 Hearing

THE COURT: And I heard — and I thought — I made what I thought was a thoughtful decision. And, you know, there can be just so many times you can come back. To be deluged with all of these documents on a motion for rehearing, I think is a bit ridiculous, when I

[6]specifically said the basis of my ruling.

MR. KRIGER: Your Honor, I don't want to —

THE COURT: So, I'm going to listen to you —

MR. KRIGER: If you just give me just a minute on the sanctions as to Elizabeth Bechtold, and that's it.

THE COURT: Yeah, sure, on something like that, okay.

MR. KRIGER: Your Honor, and I'll just rely on the pleadings for everything else. As to the sanctions on Elizabeth Bechtold, your Honor, your Honor, Ms. Bechtold is a lay person and is not necessarily familiar with what's specious, what the terms of the court rules are and a sanction's order. She's a single parent. Your Honor, what is apparent from the pleadings in this case, is this is as much a battle between Garratt and Morris as Bechtold and Morris. If you look at his responsive pleadings, he simply says, "Patented tricks by William Garratt, identical tricks employed by Garratt, obvious tactic by Garratt, so on and so forth. Your Honor, Ms. Bechtold has become a pawn in this case. If he's entitled to sanctions, give him his sanctions against Mr. Garratt —

THE COURT: You represent only Bechtold?

MR. KRIGER: Only Bechtold.

[7]THE COURT: You did, at one time, represent Garratt.

MR. KRIGER: No, never.

THE COURT: Never in this case?

MR. KRIGER: Never in this case.

THE COURT: I'm sorry, I thought you represented everybody.

MR. KRIGER: No, just —

THE COURT: Okay.

MR. KRIGER: If he wants to collect the monies there from Garratt, and I think that Ms. Bechtold — this was an incredibly bitter break-up of a marriage. She — there was a suicide attempt. I've tried to negotiate a settlement —

THE COURT: (Inaudible words)

MR. KRIGER: — tried to negotiate a settlement. She's been breaking down on the telephone whenever I talked to her in the past week, cry. To give him sanctions against Ms. Bechtold is really putting salt into the wounds. And I think that if he wants to get his money and the Court feels he's entitled to it, then it should come from Mr. Garratt and Mr. Garratt only. With that, I'll stop, your Honor.

THE COURT: You've heard that legis ignorantia

[8]nominem excusat; haven't you?

MR. KRIGER: Yes, but she's a lay person, but —

THE COURT: That's why I quoted that, because it doesn't excuse a lay person.

MR. KRIGER: Well, I know. But I think that if the Court reads between the lines, this is a battle really between Garratt and Morris. That's where the sanctions ought to come, or at least reapportion them. And that's all and I'm not going to take up any more time.

THE COURT: You didn't file any pleadings yet; did you —

MR. SCHWARTZ: No, Mr. Garratt filed.

THE COURT: Your name again, I'm sorry?

MR. SCHWARTZ: Michael Schwartz, Michael Schwartz.

THE COURT: I should know who you are.

MR. SCHWARTZ: Yes, sir.

THE COURT: Very well. You didn't file any pleadings; did you?

MR. SCHWARTZ: Mr. Garratt filed pleadings for this matter.

THE COURT: Oh, and you're representing him —

[9]MR. SCHWARTZ: I am appearing for him. I was retained yesterday to appear for him today, which I am doing. Your Honor, with respect to that last situation, I'm also — I'm going to anticipate Mr. Morris' motion. Perhaps I should speak to his motion for increase of sanctions.

THE COURT: I would think so. He hasn't —

MR. SCHWARTZ: Or else I should wait until he's done to address the Court.

MR. MORRIS: Your Honor, I would be happy to go next. May I?

THE COURT: Sure.

MR. MORRIS: Your Honor, first of all, as to —

THE COURT: One second.

MR. MORRIS: Sure.

THE COURT: I just want to get things straight here. You're no longer representing yourself, Mr. Garratt?

MR. GARRATT: Well, your Honor, Mr. Schwartz's appearance is of counsel to me, so that in order to try to save a little money here and there, I periodically file pleadings on my behalf if Mr. Schwartz is unavailable to appear. But unless — for all we know, this may be the last appearance in this case, number one.

[10]But I don't intend to make — to have a speaking role at today's hearing.

THE COURT: That's what I was wondering, whether you're going to represent yourself. I was going to suggest that litigants

can sit down because I'm only going to hear from attorneys and questions of law, so the litigants can be seated.

MR. GARRATT: You don't mind if I just stand next to Mr. Schwartz because he's brand new in the case and I may need to pass a little bit of information onto him.

MR. SCHWARTZ: It would be helpful for assistance of counsel, your Honor, if he could remain in total —

MR. GARRATT: I won't (inaudible words) the Court, your Honor.

The Court: Only because you're still an attorney.

Mr. Schwartz: Okay.

THE COURT: You're still an attorney in this case, then, I guess.

MR. GARRATT: Yes.

THE COURT: I excuse only —

MR. SCHWARTZ: My role is the same, your Honor,

[11]as Mr. McConnell's for Mr. Morris. So, it's a suicide attempt situation.

THE COURT: Okay, go ahead.

MR. MORRIS: I'll try to be brief, your Honor.

THE COURT: Hopefully.

MR. MORRIS: On the motion by Mr. Kriger to absolve the plaintiff, your Honor, the violation to the rule 2.114 doesn't say — it says — it specifically says, "Either a party or a counsel."

THE COURT: Before you argue, the sanctions against Ms. Bechtold went in favor of you. Did it go in favor of your clients too?

MR. MORRIS: Yes, your Honor.

MR. MORRIS: It did your Honor. And I want to —

Mr. Morris: Joint settlement.

Transcript, 2/2/90 Hearing

THE COURT: Do you have any objection if I talk to Mr. Kriger and the two Mr. Morris' in chambers for a moment?

MR. SCHWARTZ: Fine.

THE COURT: I don't think that will affect — it might affect you. It might, possibly. But it really just has to do with Ms. Bechtold, this aspect.

MR. KRIGER: We'd be happy to talk to you, your

[12]Honor.

MR. MORRIS: I'd be happy to talk to you, your Honor.

THE COURT: But I don't want to shut them out because they're still parties to the case.

MR. MORRIS: If they don't have an objection, we —

THE COURT: If they don't have an objection, otherwise, I'd just really like to have Mr. Schwartz in because you're a principal in this thing here.

MR. GARRATT: I don't want to stand out of chambers, your Honor.

THE COURT: All right. You can come in, if you want to.

MR. GARRATT: I appreciate it.

(Hearing concluded)

[13]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 12, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, February 2, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 25th day of /s/ May, 1990.

APPENDIX C-8
C-8.1
Transcript, 2/23/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE M. MORRIS, DONNA PIOTROWSKI, WILLIAM C. [sic] GARRATT, EDSEL MORRIS,
Defendants.

MOTION — VOLUME II

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, February 23, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

MARK J. KRIGER
1028 Buhl Building
Detroit, Michigan 48226
Appearing on behalf of the Plaintiff

EDDIE M. MORRIS
200 N. Woodward Avenue
Suite 375
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

KENNEHT [sic] J. MORRIS
27840 Plymouth Road
Livonia, Michigan 48150
Appearing on behalf of the Defendants, Piotrowski and Edsel Morris

[2]MICHAEL ALAN SCHWARTZ
4000 Penobscot Building
Detroit, Michigan 48226
Appearing on behalf of the Defendant, Garratt

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

APPENDIX C-8
C-8.3
Transcript, 2/23/90 Hearing

[3]Detroit, Michigan

Friday, February 23, 1990

At about 11:40 a.m.

THE CLERK: Bechtold versus Morris, et al, 89-909989.

MR. SCHWARTZ: Your Honor, Michael Alan Schwartz representing C. William Garratt on the matter of sanctions.

MR. MORRIS: E. Michael Morris in pro per, your Honor.

MR. MORRIS: Ken Morris, representing Edsel Morris and Donna Piotrowski, your Honor.

THE COURT: Okay. Apparently I see, Ms. Bechtold, Mr. Kriger, your attorney, is not here. Did you want to proceed without him?

MS. BECHTOLD: Well, yeah. If he doesn't show up by the time — we've reached a settlement. I don't know what there is to discuss.

THE COURT: And you understand the settlement?

MS. BECHTOLD: Yes.

THE COURT: You've discussed it with your attorney?

MS. BECHTOLD: Yes.

[4]THE COURT: And you're fully aware of all the terms?

MS. BECHTOLD: (No verbal response)

THE COURT: You have to answer for the record.

MS. BECHTOLD: Yes.

THE COURT: And is the settlement agreeable and acceptable to you?

MS. BECHTOLD: Yes, it is.

THE COURT: So, that would take care of Ms. Bechtold, then.

APPENDIX C-8
C-8.4
Transcript, 2/23/90 Hearing

MR. SCHWARTZ: Your Honor, with respect to the sanctions, I'd like to make a brief statement for the record.

THE COURT: Surely.

MR. SCHWARTZ: As you know, the last time this case was on, there was a tremendous amount of acrimony and it didn't look, at that particular time, that this thing was going to be very fruitful. Since that time, we have, I think, made a large measure of progress in that. Now, in respect of the part of this matter, what is left are sanctions against Mr. Garratt. I would ask, on behalf of Mr. Garratt, two things; one, I would ask your Honor to consider reducing the sanctions. The reason I ask that is ask [sic] follows: first, we have already shown, I

[5]think some degree of a (inaudible words) on and an to achieve a global settlement. We have, out of that kind of settlement with respect to Ms. Bechtold. But as far as the other point is concerned, Mr. Ken Morris have [sic] some considerable discussions over the course of the past two weeks. And I have had considerable discussions with Mr. Garratt. Mr. Garratt has indicated that as a method of resolving all of the outstanding matters between Mr. Morris and himself, which would include those which are currently pending in any form and those which could be, so that it would include anything or everything from the beginning of time up to the present, that this all be placed in arbitration. The reason that he suggests that is as follows: number one, now take this matter out of the courts, really, it would be preferable to courts to have to —

THE COURT: Do I have the power to order something into arbitration? I just don't think I do. I've heard this argument before.

MR. MORRIS: No, your Honor.

MR. SCHWARTZ: No, I'm not saying that you're (inaudible words) order, but I'm going against the rationale for my request.

THE COURT: Well, I'm highly in favor of it

[6]though.

MR. SCHWARTZ: I understand that. And what Mr. Morris has proposed —

THE COURT: Just a minute. I don't want to stop you, but — I know it's not a nice thing to do but why don't you refer to him as Ken and Eddie because of the fact there are two Morrises. And whenever you [sic] Mr. Morris or Morris, neither the record nor I really know who you're talking about. So, let's call them Ken and Eddie. Do you gentlemen mind?

MR. MORRIS: Not at all, sir.

MR. MORRIS: Not at all, sir.

MR. SCHWARTZ: I'll call them Ken Morris and Ed Morris.

THE COURT: Okay, either way.

MR. SCHWARTZ: Mr. Garratt has proposed that we just (inaudible words) arbitration. That would take care of everything, including the sanctions that your Honor has indicated are appropriate in this matter, and that all of that will then be able to be resolved. I talked to Mr. Ken Morris and I talked to Mr. Eddie Morris today. They have some problems with that because they feel that this thing could go on forever and ever. They're looking for some other kind of solution which would involve the

[7]disclosures, et cetera. The problem with that is several fold. The part of the problem being that in our last appearance here, when we had a conference in chambers, Mr. Eddie Morris indicated that there were attorney/client privileges involved and that we'd have to have waivers from the clients which he didn't have. That's part of the problem. The basic problem that exist [sic], as we all know, is that there is a deep-seated and deep-rooted lack of trust on both sides. Both between Mr. Eddie Morris and Mr. Garratt and between Mr. Garret [sic] and Mr. Eddie Morris. The arbitration would take care of that because there need be no trust. The other proposal, which Mr. Ken Morris or Eddie Morris may indicate to you, would involve a degree of trust and to that extent probably cannot be achieved, certainly not today. And it might require that

there be an adjournment to achieve that. What I'm suggesting is, that Mr. Garratt has — I think to a certain extent to evidence, they (inaudible words) of conciliation and is looking toward trying to resolve this, and has put forth arbitration as a means by which that may be done. To that extent, your Honor — I would ask your Honor to look at the sanctions that has [sic] been proposed against Mr. Garratt, and consider reducing or eliminating the sanctions. Now, whether they're

[8]reduced or not — on the second point, I would ask that if your Honor is not inclined to totally eliminate the sanctions, that at least — since you have already indicated that you would not entertain a stay, that you at least not make the order effective for 21 days to give this to Garratt, if this cannot be resolved, the opportunity to seek a stay in the Court of Appeals. And I believe the last time you indicated that if he were going to get a stay, that would be the Court of Appeals that they have to get it from. And, at the very least, he should have time with him in which to make that application if your Honor is not inclined to totally eliminate the sanctions. So, that's what I put forth to your Honor.

THE COURT: From what you're saying, I — the record isn't clear, and I'm not 100 percent clear either. But what you say is that there are a lot of other disputes between Eddie Morris and Garratt that should be resolved by this arbitrator other than sanctions?

MR. SCHWARTZ: There are potential disputes which may exist, which have not become the issue of any litigation presently pending. The purpose of this is — I understand from Mr. Ken Morris and from Mr. Eddie Morris that they wish to have a complete wrap up of all

[9]affairs involving Mr. Garratt. Mr. Garratt, we would concur, that he wishes to have a complete wrap up of all affairs concerning Mr. Eddie Morris. And this would be a means by which that could be achieved in such a way that one would not have to rely upon the good faith of the other side.

THE COURT: What kind of arbitration do you have in mind? A one-person arbitrator from the —

MR. SCHWARTZ: No. We were talking about a three-person arbitration. I'll tell you why were [sic] mentioning that. When you have one arbitrator, even though that arbitrator may act in complete good faith, when that arbitrator is gone and issues whatever award it is. Given the history, that I have now become more familiar with since the last time, there is an excellence [sic] chance that the side that doesn't achieve what is desired from their point of view is going to say this one arbitrator was bought off from the other side. Now, what we were looking at, initially, was a three-panel arbitration, three member arbitration panel, where Mr. Eddie Morris could pick one of the arbitrators, Mr. Garratt could pick the other arbitrator, and then the two would then pick a third arbitrator. And in that way, each side would have a full — an equal opportunity to

[10]have input into the arbitration panel. And because of having three arbitrators and having the collegial type of decision making in which proposes in that type of panel, the chances that there might be an extreme decision are certainly reduced tremendously or —

THE COURT: You know, I'm sort of in accord with what you say. My understanding of the law is, that I cannot force that on anybody.

MR. SCHWARTZ: I understand that.

THE COURT: Now, it does sound good to me.

MR. MORRIS: Mr. Kriger is now here.

THE COURT: Good. Hi, Mr. Kriger.

MR. KRIGER: Hello, Judge.

THE COURT: It does sound good to me and I would like to see it. Does Garratt have problems [sic] Ken Morris, other than the sanctions?

MR. SCHWARTZ: Eddie Morris is what you're talking about.

THE COURT: No, that's not what I'm talking about. I'm talking about Ken Morris.

MR. SCHWARTZ: I don't believe that he has any problems with Ken Morris.

THE COURT: So, the arbitration would only be between Eddie Morris and Garratt?

[11]Mr. Schwartz: That's correct, your Honor.

MR. MORRIS: Your Honor, he's proposing something that's been rejected. And I can briefly tell you, your Honor, why it's been rejected. We should just get on to the sanctions motion. It's been rejected because what Garret [sic] wants to do is — I mean, we've talked about if we gave him an evidentiary hearing it would last for weeks. If we give this guy another crack at discovery — we've asked Mr. Schwartz if we don't agree to arbitration, would Garratt agree to limit discovery or no discovery. We don't want to give him another tool to start deposing members of my family and everything else. What we did was, he wore out his welcome out in Oakland Circuit in front of Judge Gage. Judge Gage started to get a handle that the complaint was spurious.

THE COURT: Okay, I don't want to hear any long argument on it. It's something you to have a right [sic] and you're invoking it.

MR. MORRIS: That's right. I do not want to arbitrate because I'm afraid that he will use it.

THE COURT: Suppose that he will agree to arbitration which would not include any discovery. Let me start with that, then I've got some —

[12]MR. MORRIS: Mr. Schwartz has declined that offer.

THE COURT: Now, the other thing is this; no discovery other than what the arbitrators order.

MR. MORRIS: No, your Honor. Let me give you an example. Mr. Garratt is in an arbitration with a former client right now that was supposed to wrapped [sic] up by December 31th [sic]. Sharon Woods at Barris, Sott is the arbitrator. It's still going on. The clients legal fee is over $70,000. The client has been deposed 12

different days by Garratt. I won't agree to put another hammer in this man's hand.

THE COURT: That's not an issue then?

MR. MORRIS: It's not. I want to argue —

THE COURT: Then what is an issue? The only issue is now [sic] the sanctions.

MR. MORRIS: And I want to argue those. I also, your Honor, would like to get the two releases from Mrs. [sic] Bechtold, now that Mr. Kriger is here, and there's an proposed [sic] order. And I'm supposed to be given two of those so I can take them and get signatures. And there's a proposed order for your Honor that we both agree to. I'd like to get that out of the way because I don't want to leave here without having that wrapped up.

[13]THE COURT: All right, Mr. Kriger, I've already interrogated your client as to whether she has settled and whether or not she understands all the consequences and the terms and conditions. And she's indicated that she does. She's also indicated this of her own free will and that it's agreeable — acceptable to her.

MR. KRIGER: And I believe it's in her best interest as we speak.

THE COURT: Okay, so can we get rid of that?

MR. MORRIS: Can we exchange those documents?

MR. SCHWARTZ: All that's happening — I would just like to say, with respect to the arbitration, is to should [sic] have a limit. There's a question to have no discovery at all. I, myself, could not recommend that because I'd be guilty of malpractice.

THE COURT: Of course. But here's the thing, you've discussed it with Mr. Eddie Garratt and he —

MR. SCHWARTZ: With Mr. Morris and —

THE COURT: I'm sorry, with Mr. Eddie Morris. And he says no and I can't order it. I would like to order.

MR. SCHWARTZ: I understand you can't order it. And the only reason we bring this to your Honor's attention is because we think that it does show movement

[14]by Mr. Garratt. So, that in the consideration of a sanctions, that might be a factor that you look at.

THE COURT: I did this. We did discuss the sanctions last time. And my recollect — whether it was on the record or not, I don't remember. But I do remember this, that when these gentlemen asked for dollar sanctions, I do recall this, that I was satisfied that sanctions were in order and I did cut them way down. So, as far as I'm concerned now, the amount of the sanctions are — they're res judicata you to count because everybody had a chance for his input. And I ordered a certain — I cut them way down, primarily because I didn't want to have to have a hearing on every item. And I cut it down so much that if they do come in, they could probably at least make out a prima facie case for substantially more than what the Court ordered. So, I'm not going to reduce them. The only other thing now is a stay. Do you object to a stay?

MR. MORRIS: Yes, your Honor, and I'd like to briefly address that issue, if I may. Your Honor, I know you've indicated — I don't want him to even be given 21 days, your Honor. Also, your Honor, I agree with you that the sanctions issue was widely explored. The one thing that wasn't considered, you issued $11,500 in compensatory sanctions. I've now called to the Court's attention, the *Elliot* case, which was a Court of Appeals case. But I'd also like to call to the Court's attention, *Michigan Bell* versus *SVAT*, 177 Mich App 506 which basically holds that sanctions can't — the term penalties was — applies to sanctions and I'll just say the conclusion. We conclude that MCR 2.114(E) authorizes the imposition of punitive fines and is not limited to actual costs and attorney's fees.

THE COURT: I understand this.

MR. MORRIS: My point of this is, you issued $11,500 out of a potential $33,000 in sanctions, you issued one-third. You also, at the time you made the ruling, used language identical in your rul-

ing. And I've got the 148 page transcript here, identical to *Elliot*, in which the Court said, "I find that this action was vexatious and spiteful." After you said that, you went on and said, "I realize it's substantially less than the claim, but I've got to take into account who's paying these sanctions and what they're [sic] financial status may be." We've now got Elizabeth Bechtold out. The $11,500 did nothing to deter Mr. Garratt from filing a motion for rehearing. And the plaintiff even filed a motion for leave to file a second amended complaint. And what was

[16]incredible about that was, she wanted to amend her pleadings to include Edsel Morris, my father and Donald Piotrowski, even though in this transcript you said there was no possible way that she should have sued them. What I'm saying, your Honor, is that I'm making a pitch because it hasn't obviously affected Mr. Garratt, yet that you at least issue equal sanctions, as the *Elliot* court did. Based on the Michigan court of appeals rule, you can issue equal. You can even issue more. But equal sanctions to the $11,500, you now have affidavits totally 33. I don't want to have to have an evidentiary hearing because it'll take up too much time. The court cases say you don't have to have an evidentiary hearing. I'd like, your Honor, to double the sanctions at least. And that's punitive, it's not compensatory. You're issuing $11,500 compensatory and $11,500 punitive. And that's my pitch. And I'd ask that there not be a stay. One final point, the last time we were here, I asked that Mr. Garret [sic] be here with a check because I wanted — if we weren't going to settle this thing. And he's put things on the records as to the settlement negotiations. Ken Morris — so I should put something on. Ken Morris asked them, "What price would settle it? If you won't pay me twenty, what will you pay; anything?" They won't give us a price.

[17]They say they don't want to settle in the dark. But we've tried to settle too and he just hasn't got the message from this court yet. And I think not only should you deny the stay and you should tell — and I've got an order here denying the stay and asking that I be paid by 4:00 today, but also I think you should issue punitive sanc-

tions in the equal amount. And that hasn't been considered yet, and I ask that it be considered.

MR. SCHWARTZ: You [sic] Honor, Mr. Garratt has really shown some good faith since the last time and part of that is the fact that we've got this settlement, which I think has to be —

THE COURT: You haven't settled. Somebody completely different than Garratt has settled.

MR. SCHWARTZ: You have to recognize, your Honor, that Mr. Eddie Morris stated the last time that Mr. Garratt's persuasive powers over Mr. [sic] Bechtold was instrumental in not being able to settle. If he said it last time, I don't know how he could say that, he was being an obstructionist last time and now not given credit for what's been done. I think that it would be, as a matter of fairness, to give him at least the chance to get a stay in the Court of Appeals, but that it ought to be held for 21 days. It's not a stay as it would be

[18]if your Honor just simply issued a blank stay which would go on until the end of the case. It would just give him the time to seek a stay, which I think is fair. To increase the sanctions at this time, I don't think is wanton by the good faith —

THE COURT: Doesn't he have an automatic 21 days from the time that I originally ordered it?

MR. MORRIS: No, your Honor, your order ruled that he had to pay up by a certain date. And instead of paying it, he filed a motion for a stay. If you deny the stay, he's obligated to pay. And I don't think there's any merit to a stay here. I mean, he's come on with more pleadings rather than less.

MR. SCHWARTZ: (Inaudible words). Not a total stay.

THE COURT: No, but you see, he had time from the original order to go to the Court of Appeals. I'm going to deny the motion.

MR. MORRIS: Your Honor, how about the increase in sanctions?

APPENDIX C-8
C-8.13
Transcript, 2/23/90 Hearing

THE COURT: Well, again, I've got to admit that I sort of think you may be entitled to some punitive sanctions, but I just can't find it in my heart to penalize a lawyer any more. I'm sorry.

[19]MR. KRIGER: Your Honor, I have the orders dismissing —

THE COURT: Right. Okay, give them to the clerk.

MR. MORRIS: Thank you, your Honor.

(Hearing concluded)

APPENDIX C-8
C-8.14
Transcript, 2/23/90 Hearing
[20]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 19, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, February 23, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 25th day of /s/ May, 1990.

APPENDIX C-9
C-9.1
Transcript, 3/23/90 Hearing

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH BECHTOLD,
Plaintiff,

vs.

Civil Action No.
89-909-989-CZ

EDDIE MORRIS, DONNA PIOTROWSKI, WILLIAM GARRATT, et al.
Defendant. [sic]

MOTION — VOLUME I

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, March 23, 1990, at 1601 City-County Building, Detroit, Michigan.

APPEARANCES:

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Bloomfield Hills, Michigan 48013
Appearing on behalf of the Defendants, Donna Piotrowski and Edsel Morris

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Appearing on behalf of the Defendant, C. William Garratt

[2]TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

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C-9.3
Transcript, 3/23/90 Hearing

[3]Detroit, Michigan

Friday, March 23, 1990

(At about 11:08 a.m.)

THE COURT: Bechtold versus Morris, 89-909-989.

MR. MORRIS: Ready, your Honor.

MR. SCHWARTZ: Your Honor, Michael Allen [sic] Schwartz appearing on behalf of C. William Garratt.

THE COURT: Did you put your appearance on the record?

MR. MORRIS: E. Michael Morris, your Honor, on behalf of myself, in pro per.

MR. MORRIS: Kenneth J. Morris, your Honor, on behalf of Donna Piotrowski and Edsel Morris.

MR. SCHWARTZ: Your Honor, on March 9th, 1990, this Court made certain rulings from the bench. The purpose of today's proceeding is to enter an order, based upon those pronouncements from the bench. I have an original for your Honor. We've only served copies of this proposed order upon the defendants.

Mr. Garratt has filed a cash bond. I have with me, if your Honor wished to look at it, a receipt from the County Clerk showing that it was filed within the prescribed [sic] by this Court on March 12th, 1990. Mr. Garratt has also timely pursued his appeal, there is a

[4]claim of appeal — I'd like to show that to the Court, also — which he served on the parties and filed with the court on March 16th, 1990.

Based upon that, Mr. Garratt has done everything that your Honor said would be necessary in order to remove these problems with the receiver and the discovery of assets.

Now, the order that we have proposed reflects that. Specifically, it indicates that the supplementary proceedings are going to be barred. Now, there's a reason that have that here. [sic] You may have read the objections of Mr. Morris.

THE COURT: I started to, I didn't finish. Go ahead, I'm listening.

MR. SCHWARTZ: Well, it's interesting reading, but I don't think much of it is relevant to what we have before us today. In as much as there is bond, and that bond has now been filed, if it should come to pass that Mr. Garratt is not successful in his appeals, Mr. Morris now has a source of money from which to satisfy the sanctions. There is no longer any basis for a receiver or for discovery of assets. What Mr. Morris wants is to have that simply stayed until the end of the appellate proceedings, at which point the stay would then dissolve.

[5]Mr. Morris —

THE COURT: The money's available.

MR. SCHWARTZ: But then Mr. Morris would then have a choice of remedies. He could either proceed after the bond or as has been the want in this case, go on with even more problems by then proceeding with the receivership and the discovery of assets. There is no reason for that to occur now that a bond has been posted, and therefore, that should be removed and set aside. And this order calls for that.

Now, Mr. Morris has two points that he makes which we're willing to agree with. Number one, he said that he wanted a time limitation with respect to the part about the stay.

THE COURT: You know, once there's a bond, that's the stay; isn't it? That's my understanding. That stays everything until the Court of Appeals speaks?

MR. SCHWARTZ: That's correct.

THE COURT: So, what's the problem?

MR. SCHWARTZ: The problem you have, your Honor, is this. The reason that the sanctions — the receivership was put into place, is because Mr. Morris said that he needs to get his money. We came before your Honor, your Honor agreed that if we had a bond that would

[6]satisfy it. If the bond remains, that is the source — and it should be the exclusive source, after which Mr. Morris goes. He should not be in a position when he can now go in and say, "Well, the order appointing the receiver, which was stayed, is no longer stayed and therefore, I can elect, at my discretion, to proceed with receivership." That should not be allowed, because that's simply going to create more problems. What we're seeking to do with this order is to avoid that very problem by indicating that that previous order is now set aside, because there's no need for that. Mr. Morris is fully protected with the cash bond that has been posted.

That being the case, that order should not merely be stayed so that it can then be lifted, I guess in the event that something happens in terms of an affirmance, it should just be set aside so that Mr. Morris' exclusive remedy will be simply to go after the —

THE COURT: Why can't we just stay everything? I'm never going to let a receiver do anything if the money's right there to be paid.

MR. SCHWARTZ: Well, this is what we want to be sure of, to make sure that this happens, or for some reason you're not on the bench. What if something should

[7]happen?

THE COURT: It could happen.

MR. SCHWARTZ: We want to make sure that there's — that whoever the judge who comes in is not faced with this entire problem all over again, and you're familiar with this case. Who knows when these appeals may end? I don't have any idea when things may end. I don't know the schedule of the appellate situations as they exist. It could take a long time. In any event, if this should be done, we don't want to have either your Honor or some other judge faced with this entire conopole (ph) of proceedings, which was —

THE COURT: You know, let's assume, arguendo, that it goes up to the Court of Appeals and let's assume that I'm affirmed and the money has to be paid, I can't picture any judge saying, "No, they

don't have to take the money from the bond." I just can't conceive it. You can always do this, you can always say, "Look, there's a judgment here now for $12,000, I want the Court's permission to pay it into court and stop everything." You can do it. I don't understand why we're getting so technical. A stay is a stay is a stay. It doesn't matter what you call it.

MR. SCHWARTZ: The reason we're getting

[8]technical, your Honor, is because, just as Mr. Morris says that he doesn't trust Mr. Garratt and is afraid Mr. Garratt may do things in the future, Mr. Garratt [sic] the same concerns about Mr. Morris. And, as your Honor knows from the proceedings that we've had thus far, each of these people has their own reason to believe that the other one may do something. And this was simply via method by which this problem can be, to some extent, set to rest and start some —

THE COURT: Okay. Mr. Morris, can't we work this out?

MR. MORRIS: Yes, your Honor. I've revised his proposed order. Let me tell you —

THE COURT: Did you show it to him?

MR. MORRIS: Yes, and he won't agree to it. Let me tell you what Garratt's trying to do. What your Honor did that day could have been in a very short order.

THE COURT: That's what I thought.

MR. MORRIS: Right. But you see, what Garratt does, and I know this is Garratt's method, this is Garratt, this is on Garratt's stationary, he comes out with this complex order with all kinds of hookers in here. Now, there's three hookers in here. Let me show them to your Honor.

[9]THE COURT: Go ahead.

MR. MORRIS: The first one is, at the top where I've crossed out, Garratt hereby stays execution of this Court's prior orders.

Transcript, 3/23/90 Hearing

THE COURT: Just a second, I want to be sure I see it. "This Court hereby stays execution."

MR. MORRIS: I've crossed that out. "Of this Court's prior orders." In other words, he was staying execution even of all orders, not just the 3/1/90 order. So that was the first thing. And then he bars, in his next thing which I've crossed out, all supplementary proceedings without a termination date, which means that if the Court of Appeals affirmed, Garratt would wave this order and say, well, he may have affirmed, but you can't execute on the bond, you can't execute on anything, because Judge — so now they say, well, they'll forego, you don't have to bar, so I crossed that out; that's number one.

The second thing Garratt cleverly does in this order is down at the bottom of the page, the last three lines which I've crossed out now, says your March 1, 1990 order shall be deemed to be set aside and held for naught without further order of pronouncement of this Court. Let me tell you why that — you didn't say that. You

[10]said, Garratt, if you come in by sunset on Monday, I'll stay that March 1, 1990 order, if you come in by sunset on Monday with a cash bond. That's what you said. If he didn't post a bond by 5:00 on Monday, then we went back to your March 1 order. The distinction's very important, because after we left the courtroom, Ken Morris and I were out in the elevators with — near the elevators with Garratt and Mr. Schwartz, and Garratt's comment was "Well, you've now put McConnell squarely in front of 900 Marquette."

The Court: What's that?

Mr. Schwartz: That's the address of Plunkett, Cooney.

Mr. Morris: Right. But Mr. Schwartz corrected him and said, "No, the Attorney Grievance Commission is 256 Marquette," and Garratt had to laugh. Garratt repeated it again, "Well your overzealousness has put Mr. McConnell in front of 256 Marquette." He wants you to hold your March 1, 1990 order void and for naught, because apparently he wants to create some argument that

the entry of that order was improper. And I won't stand for it. I've told Mr. McConnell about this. Mr. McConnell didn't do anything as a receiver. He was appointed by the Court. We had case law that backed it

[11]up. But for you to now hold your March 1, 1990 order void and for naught, you didn't say that. You said, Garratt post. So, I've crossed that out, and I don't want any inference that the March 1, 1990 order was improper, because I'm convinced that it wasn't.

MR. SCHWARTZ: That's not what that does, your Honor—

MR. MORRIS: Well, your Honor, can I finish? There's a third point. My third point is, on the last page, I've knocked out, denied without prejudice, because you denied his relief and I don't —

MR. SCHWARTZ: We don't have a problem with that, your Honor.

MR. MORRIS: Okay, so —

MR. SCHWARTZ: We'll take out the words, without prejudice.

MR. MORRIS: But we didn't need this long order, your Honor, and I started to read it when it came in, and I thought, why is he proposing such a long order, and then I started reading it, and he's creating rulings that weren't made. So, the order I've just conformed, if your Honor reads it, is now accurate. It stays things. It doesn't say other things are void or for naught and it's a correct order now.

[12]MR. SCHWARTZ: Your Honor, with respect to this so-called grievance business, I will tell you as a former grievance investigator —

THE COURT: I know you are.

MR. SCHWARTZ: — that there is no way that a lawyer who's been ordered by a judge to be a receiver can be guilty of misconduct for following a judge's order, irrespective of whether or not the judge entered the order properly or improperly. That's just simply

a fact that everybody would know, because if a person follows a judge's order, he's in good faith, period. That's the end of that.

The reason for this, again, if you'll take a look at Mr. Morris' objections, you'll see that the real reason that he does all this is, again, he asks at the end for an increase in the sanctions. He wants to come back to this court again and he says it, and he's got it right over here.

THE COURT: Where?

MR. SCHWARTZ: Page four.

MR. MORRIS: I forgot to address that. I am asking for —

MR. SCHWARTZ: Of course, that's the whole reason he's here.

[13]MR. MORRIS: This the [sic] fifth time I'm here and we've been up to the Court of Appeals and back. And Garratt should have asked for a stay bond when he first came into and proposed an appropriate one. Why do we have to come back here five times, and in the meantime run up to the Court of Appeals and back. I forgot to address that. Thank you, Mr. Schwartz. I'd like sanctions for being here, your Honor.

MR. SCHWARTZ: He couldn't do that, your Honor, because there wasn't a final order at the time. If there be anybody who should have sanctions, your Honor, in this motion, it's not Mr. Morris, that I can guarantee you, the motion that we had is not improper. The setting aside of the receivership is to simply prevent any type of impropriety to occur in the future in the event that there is a judge who may end up with this who doesn't have a —

THE COURT: No, you know what I'm going to do? I want a simple order where I stay all proceedings until the Court of Appeals make a decision. Why can't you do that? That's what I want. Some of this, I agree, is a lot of verbiage that isn't necessary. The very fact that even now, Mr. Schwartz, that you concede this without prejudice is ridiculous.

[14]MR. SCHWARTZ: I don't say it's ridiculous, your Honor.

THE COURT: I say it's ridiculous.

MR. SCHWARTZ: Let me this much [sic] to you, just so that you understand. Mr. Garratt sent Mr. Morris this thing back on Friday, and I've got here a copy of the facts. We sent this to him on Friday, March 16th, and he said to him, he said, "May I please have your concurrence?" Just a moment. This is the paper that he had, we sent over to him. Here's a copy of the fax thing. Mr. Morris refused to answer it. If Mr. Morris had said to him, "Look, here's what I want. Take this." He would have done it. The first time that I saw anything from Mr. Morris, in terms of changing the order, was approximately a half hour ago while we were waiting in this courtroom to be called.

Now, it's not ridiculous. It would be ridiculous if we had had this — had had notice of this before today's proceedings. But the way he's done it over here, he hasn't given us a bit of change until today, and now claims, for some reason, that we should —

MR. MORRIS: Your Honor, may I comment on this? He's had our objections for days. They were filed under the court rules. He knows what the problem is. There

[15]wouldn't even be a bond here, but I did the research myself, picked out the Supreme Court form for the bond, and we had it sent over to his office because he sent us a ridiculous bond. We're not trying to put more time into this case. This whole motion, this order was ridiculous that they proposed.

MR. SCHWARTZ: Your Honor, this objection we've had for days was received by my office yesterday. It was mailed out the day before yesterday. We could not have had it for days when it didn't exist —

THE COURT: I'm not going to order any sanctions now. The next time you come back, there's going to be sanctions against somebody for having to come back.

MR. MORRIS: Fine, your Honor.

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C-9.11
Transcript, 3/23/90 Hearing

THE COURT: You know, the changes that Mr. Eddie Morris made, I think they're fine, I see nothing wrong with them. It specifically talks about what order we're talking about is being stayed. It specifically doesn't say anything about defendant's other objections are granted. I don't know what other objections that I'm granting of any defendant. And I think defendant really is not the proper term. But anyway, it's just not necessary for what this is to do. This is really an

[16]order staying any further proceedings, and that's all I want to do, enter an order staying any further proceedings of any kind.

MR. SCHWARTZ: So the record can be absolutely clear, perhaps we can put in the order that Mr. Morris will not have the ability to proceed with receivership as an election of remedies; that's the prime concern that we've got.

THE COURT: Oh, you know, I can't believe — well, of course, I've seen so many things that I can't believe —

MR. MORRIS: Your Honor, Mr. McConnell didn't act in the ten days he was allowed to act. McConnell —

THE COURT: I'll let you put something in the order that, in the event — listen carefully, in the event that after — in the event that the Court of Appeals affirms this matter, the first satisfaction will be looked at the bond — the bond will be looked to for the first satisfaction, and if that covers it, that'll end it.

MR. MORRIS: I'll have that retyped with that sentence added.

THE COURT: Yeah, put that sentence in. That's a (inaudible words) sentence I just propounded.

[17]MR. SCHWARTZ: You said, if the Court of Appeals if at appellate remedies?

THE COURT: Yes, absolutely, absolutely, because you may want to go to the U.S. Supreme Court before this is over.

MR. SCHWARTZ: I'm not saying that we will.

THE COURT: You might, you might. Appellate remedies, right.

MR. MORRIS: Thank you, your Honor.

MR. SCHWARTZ: Thank you, your Honor.

(Proceedings concluded at about 11:25 a.m.)

APPENDIX C-9
C-9.13
Transcript, 3/23/90 Hearing

[18]REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 17, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, March 23, 1990.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This /s/ 23rd day of /s/ July, 1990.

MICHIGAN COURT RULES OF 1985
RELEVANT RULES AND NOTES

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER 1.100 APPLICABILITY; CONSTRUCTION

RULE 1.101 TITLE; CITATION

These rules are the "Michigan Court Rules of 1985". An individual rule may be referred to as "Michigan Court Rule _____", and cited by the symbol "MCR _____". For example, this rule may be cited as MCR 1.101.

Note

* * *

The notes that follow each rule were prepared by the Supreme Court staff to assist the reader in identifying the substantive changes that the rules make from prior Michigan practice. They have not been approved by the Supreme Court, and should not be considered an authoritative construction of the rules.

* * *

RULE 2.110 PLEADINGS

(A) Definition of "Pleading". The term "pleading" includes only:

(1) a complaint,

(2) a cross-claim,

(3) a counterclaim,

(4) a third-party complaint,

(5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and

(6) a reply to an answer.

No other form of pleading is allowed.

* * *

RULE 2.113 FORM OF PLEADINGS AND OTHER PAPERS

(A) Applicability. The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules. However, an affidavit must be verified by oath or affirmation.

* * *

RULE 2.114 SIGNATURES OF ATTORNEYS AND PARTIES; VERIFICATION; EFFECT; SANCTIONS

(A) Verification.

(1) Except when otherwise specifically provided by rule or statute, a pleading need not be verified or accompanied by an affidavit.

(2) If a pleading is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts pleaded; or

(b) including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief".

In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (A)(2)(b) may

be found in contempt of court.

(B) Signature Requirement. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the pleading.

(C) Failure to Sign. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the pleading;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a pleading is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2).

[Amended January 25, 1985; January 31, 1985; amended effective December 12, 1986].

Note

MCR 2.114 covers the subjects of the signing of papers and the sanctions for unwarranted allegations or denials. These provisions, which are based on the recent amendment of FRCivP11, differ considerably from the corresponding provisions in the prior Michigan rules, GCR 1963, 114 and 111.6.

Although the rules uses the term "pleading", it also applies to other papers. See MCR 2.113(A).

Subrule (A) provides that pleadings need not be verified or accompanied by an affidavit in the absence of a specific rule or statute so requiring. However, pleadings must be signed (see subrule [B]), and subrule (D) provides that the signature operates as a certification of the signer's knowledge of the contents of the pleading, of the signer's good faith belief that the pleading is warranted by the law and facts, and that the pleading is not interposed for improper purposes.

When verification is required by statute or rule, subrule (A) permits the verification to be either by oath or affirmation or by signing a declaration like that found in GCR 1963, 114.3. FRCivP 11 does not include such a provision, but a federal statute allows the use of a similar declaration. See 28 USC 1746.

Subrule (E) authorizes the court to impose sanctions for a signature in violation of the rule.

The [January 25, 1985] amendment of MCR 2.114(A)(2)(a) corrects a typographical error, substituting "oath or affirmation" for "oath of affirmation".

APPENDIX E

E-0.1

Papers Filed By Petitioner in the Trial Court on Behalf of Plaintiff

PAPERS FILED BY PETITIONER
IN THE TRIAL COURT
ON BEHALF OF PLAINTIFF

1. Appearance
2. Notice Of Taking Deposition *Duces Tecum*
3. Notice Of Taking Records Deposition
4. First Amended Notice Of Taking Deposition *Duces Tecum*
5. Plaintiff's Response To Defendant Eddie M. Morris' Motion To Compel Discovery And For Entry Of Order and Plaintiff's Request For Sanctions Against Defendant Eddie M. Morris
6. Plaintiff's Emergency Motion: (1) To Strike Defendants' Motion To Dismiss Or, Alternatively, To Adjourn Hearing; (2) To Vacate Portion Of December 1, 1989 Ruling; (3) To Hold Defendant Eddie Morris In Contempt; (4) To Compel Defendants to Provide Discovery; And (5) For Sanctions
7. Plaintiff's Answer to Defendants' Motion For Accelerated Judgment
8. Plaintiff's Supplemental Memorandum In Opposition To Defendants' Motion To Dismiss
9. Affidavits Of Plaintiff, C. William Garratt, Mark D. Evans, Eric J. McCann, Mark W. Hafeli, Kathleen Trepte and Peggy Strutz In Opposition To Defendants' Motions
10. Plaintiff's Response To Defendant Eddie Morris' Motion To Release Funds Allegedly Interpled With Court
11. Affidavits of Stuart Trepte, Kathleen Trepte, Mark D. Evans and Alicia McCully In Opposition To Defendants' Motions
12. Affidavits of Plaintiff's Co-Counsel

FILED
MAR 7 1994
OFFICE OF THE CLERK

No. 93-1152

In The Supreme Court Of The United States
October Term, 1993

C. William Garratt,
Petitioner,

v.

Eddie M. Morris, Edsel Morris,
and Donna Piotrowski,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To The Michigan Supreme Court

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QUESTIONS PRESENTED FOR REVIEW

1.

WHETHER THE MICHIGAN SUPREME COURT PROPERLY INTERPRETED ITS OWN COURT RULE, MCR 2.114, AS WARRANTING SANCTIONS AGAINST AN ATTORNEY THAT FILES ANY FALSE DOCUMENTS, INCLUDING ANY MOTION OR AFFIDAVIT, WITH A MICHIGAN COURT.

2.

WHETHER PETITIONER GARRATT, AN ATTORNEY, WAS DENIED DUE PROCESS AFTER A FINDING WAS MADE THAT HE HAD FILED FALSE AND FRIVOLOUS PLEADINGS FOR THE IMPROPER PURPOSE OF HARASSMENT AND VEXATION.

3.

WHETHER THE MICHIGAN COURT OF APPEALS HAD AN OBLIGATION TO DECIDE PETITIONER'S "ALTERNATIVE" ARGUMENTS.

4.

WHETHER PETITIONER GARRATT SHOULD BE SANCTIONED FOR MAKING FALSE STATEMENTS IN HIS CERTIORARI PETITION TO THIS COURT.

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INTRODUCTION

One thing is quite clear from Petitioner's petition to this Court, namely that Petitioner C. William Garratt (sometimes "Garratt") has continued his consistent pattern of brashly lying to courts. The *certiorari* petition contains a host of such lies, and this Court should consider sanctions for that petition.

In any event, there is no valid constitutional argument or consideration presented by Garratt's *certiorari* petition. Indeed, there is no legitimate argument raised that would possibly warrant a review by the United States Supreme Court. To the contrary, the Michigan Supreme Court simply interpreted Michigan court rules that the court itself had adopted in affirming two lower Michigan courts that had issued sanctions against an attorney (Garratt) that made both false and frivolous filings in a Michigan court. *See* Staff Comment to MCR 1.100 ("After the submission of the committee report, the Supreme Court again considered the rules and adopted them in the present form"). Appendix "C".

Garratt apparently believes that he should "escape" mandatory sanctions under both a Michigan Court Rule and a distinct and specific statutory provision because false affidavits and false and frivolous motions he filed should not technically be considered "pleadings" under the Michigan Court Rules.

However, in affirming sanctions against Garratt, the Michigan Supreme Court resolved a conflict that existed in the Michigan Court of Appeals, and aptly held that, "... sanctions can be imposed against a lawyer who files an improperly signed paper, even if it is not a pleading." Petitioner's Appendix A-2, A-2.4. Succinctly stated, there is no constitutional issue present here.

Also of note is that the Michigan Supreme Court is a discretionary court. That court need not review a case, or every issue in a case. *See* MCR 7.301. Appendix "C". Therefore, Garratt's complaint that the Michigan Supreme Court did not revisit all issues decided by the Michigan Court of Appeals is specious. The court,

upon a review of the record, determined that the only issue that warranted attention was whether the false filings by Garratt warranted imposition of mandatory sanctions per the provisions of MCR 2.114. Obviously, the Michigan Supreme Court would not have reached this issue, unless the record and decisions of the lower courts established the basis for application of the mandatory sanctions rule that the court itself had adopted/issued.

And, contrary to suggestions of Garratt as to a sparse record, Garratt was sanctioned only after a hearing of nearly four hours, during which he was granted ample argument on every point of law and fact. The record that was actually developed, as reflected by more than 140 pages of transcript, overwhelmingly demonstrated the propriety of sanctions.

Thereafter, two exhaustive briefs, totalling nearly 100 pages, were filed in the Michigan Court of Appeals that painstakingly detailed the false documents, including motions and affidavits, that had been submitted by Garratt to the trial court. Consequently, for Garratt to feign ignorance of what caused him to be sanctioned is simply the acts of a blatherskite, desperate to avoid the consequences of his misdeeds.

COUNTERSTATEMENT OF THE CASE

Garratt makes the following claim in his remarks to this Court:

> That is, Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Petition for Writ of Certiorari, p. 5.

This assertion, as are others in the petition, is blatantly false.

In fact, all one needs to do is look at the language of the sanctions order included in Appendix C-1 at C-1.2 of Petition for Writ of Certiorari. The trial court expressly noted, contrary to Garratt's claim, as follows:

> ... Plaintiff and her counsel, C. William Garratt, having signed pleadings that this Court has determined contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this Court having also found that pleadings signed by the Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;
>
> IT IS HEREBY ORDERED that based upon the violations by Plaintiff and her counsel, Garratt, of MCR 2.114, and also pursuant to MCR 2.625, sanctions are awarded against both Plaintiff and her counsel, jointly and severally, ...

In fact, on or about December 18, 1989, Garratt procured an affidavit from attorney Eric J. McCann.[1] Appendix "B-1". (Petitioner

[1]Given the obvious lack of any federal issues, and the concrete Michigan authority (*i.e.*, both court rule and statute) underpinning the decisions of the Michigan courts, Respondents will not waste time detailing each of Petitioner's false filings and statements. Respondents have provided examples sufficient to demonstrate that false filings were made, should the Court even reach this issue.

was, at the time, representing Mr. McCann in a fee dispute with a former client.) The affidavit was notarized by Garratt's then personal secretary, Alicia McCully.

The McCann affidavit questioned whether Plaintiff, Elizabeth Bechtold ("Bechtold"), had been mentally competent at the time she signed a property settlement agreement and authorized entry of a judgment in the underlying divorce action. The obvious goal of that affidavit was to convince the trial court that issues of fact may exist with respect to Bechtold's competency, and thereby avoid dismissal, as a matter of law, of claims which sought, in part, to set aside terms of a divorce judgment and property settlement (which included express releases executed more than 2½ years earlier).

McCann professed to have detailed knowledge as to the Bechtold representation; and alleged that he and another attorney had actually performed the work in the Bechtold divorce case. McCann also opined that Bechtold was not competent when signing the divorce decree; and that her signature was the product of a "weakened mental condition". In addition, McCann alleged that he had engaged in numerous discussions with Bechtold, and that "we" (*i.e.*, he and another attorney in his firm) had actually recommended that Bechtold not agree to the property settlement.

McCann's precise words are extremely significant, and we set forth a portion of his affidavit as follows:

2. My former law firm ... represented Ms. Bechtold for a one month period beginning on or about March 17, 1989 in a divorce action filed against her by Eddie Morris. The work was done by myself and Mark Hafeli.

3. During our representation of Ms. Bechtold, it was abundantly clear that she was suffering from severe emotional distress caused by her relationship with her then husband, Eddie Morris.

* * *

5. During the course of that representation, Ms. Bechtold insisted that my firm not compel answers to interrogatories or seek

any other discovery from Eddie Morris or the Garratt law firms. She expressed fear that her employment would be terminated, leaving her with no means of support if such were pursued.

6. Although we believed the settlement proposed by Eddie Morris was not fair or reasonable to Ms. Bechtold and we recommended to her that she not accept that ore any similar settlement, she insisted on accepting the settlement because she could not mentally or physically put up with the ordeal (not an ordinary divorce) to which Eddie Morris was subjecting her.

* * *

8. In my opinion, due to Ms. Bechtold's emotional trauma induced by Eddie Morris, Ms. Bechtold was incapable of conducting an attorney/client relationship, incapable of accepting her attorney's advice, and incapable of any knowing understanding of her rights.

9. Ms. Bechtold was so mentally brow beaten by her husband/employer Eddie Morris that she could not act competently in our representation of her.

* * *

11. In my opinion, Ms. Bechtold's execution of the 'Property Settlement' and submission to the Judgment of Divorce was the direct product of weakened mental condition.

Appendix "B-1" (emphasis added).

The problem with Mr. McCann's affidavit was that it was false, and both Petitioner Garratt and McCann knew it was false.

In fact, in the case of *Garratt* v *Pauley*, Oakland County Circuit Court, civil action No. 88-361909-CZ, McCann had signed a pleading that stated that he had "never" represented Plaintiff. Appendix "B". And, in the *Pauley* case, Petitioner Garratt was actually counsel of record, so he obviously knew of the prior McCann filing. Ironically, in the Oakland County case, Petitioner Garratt and McCann had been opposing counsel (Garratt was suing

Mr. Pauley, a former client, for legal fees), and Garratt filed a motion to disqualify McCann in the *Pauley* case alleging that during McCann's purported representation of Plaintiff Bechtold, a paralegal in Garratt's law firm, McCann supposedly acquired confidential and secret information as to the Garratt law firm. McCann's response to Garratt's motion in the Oakland County action, months before Garratt induced McCann to sign an affidavit in the case at bar, had been as follows:

> Eric J. McCann never represented C. William Garratt, and never represented Elizabeth Bechtold. Although Elizabeth Bechtold did consult with Eric J. McCann, he declined to represent her and referred her to Mark Hafeli, a lawyer in Eric J. McCann's former firm of Beier, Howlett. That representation, however, ended some time ago.

See Appendix "B-4" (emphasis added).

The above words of McCann were obviously in direct conflict with those contained in the December 14, 1989 affidavit that Garratt submitted to the trial court in the case at bar. Indeed, in his April, 1989 pleading to the Oakland County Circuit Court, McCann claimed to have "never" represented Bechtold. Yet, in the affidavit submitted by Garratt to the trial court, McCann claimed not only that he had represented Bechtold, but that he had given her extensive legal advice and was even competent to state her mental condition at the time she entered into the property settlement.

The falsity of the McCann affidavit was brought to the trial court's attention. The court commented:

> [The Court]: We need consistency in what Mr. McCann says, where he says he represented her as — on this affidavit that you [Garratt] filed in this case, and there's a pleading, apparently, filed by him in which he says he never represented her.
>
> * * *
>
> [The Court]: It's an inconsistency.

Appendix "A-4, A-4.3".

Garratt then weakly attempted to explain what McCann must have "intended to convey" by his Oakland County pleading. The court promptly rejected Garratt's absurd explanation and ruse:

> [The Court]: Well, I'm not going to go into that. He says he never represented her, so we'll take his word. Now, I'd rather he explained it and you tell me what you think and [sic] [than] you tell me what you think he meant, because your evidence what you think he meant is objectionable. I never let anybody read someone else's mind.

Appendix "A-4, A-4.3 - 4.4".

To this day, Garratt has never explained away the procuring and filing of the false McCann affidavit.

In addition to the false McCann affidavit that Garratt procured and filed, Garratt also actually signed a number of pleadings in the lower court, including his own affidavit, which was false. Therefore, Garratt's assertions that he did not actually sign any false or frivolous pleadings is itself a falsity.

Some brief background is necessary.

As noted above, the underlying action involved an attempt by Bechtold to overturn a divorce decree that had been final for well more than one year. Petitioner Garratt had been present when Bechtold testified at a deposition to the fact that she had known that her twin sister had collected sums from Respondent Eddie Morris that were alleged expenses owed for the operation of a gift shop in northern Michigan. Appendix "B". Per a divorce decree, Respondent Eddie Morris was to pay 25% of such expenses and be entitled to 25% of any profits/revenues. Despite such testimony at her deposition, Bechtold had signed an affidavit that was filed on or about December 14, 1989. In that affidavit, Bechtold falsely contended that she had no prior or concurrent knowledge of her twin sister writing letters demanding Respondent Eddie Morris to pay the expenses (which were paid). *See* Appendix "B". That affidavit

was obviously false, given her own deposition testimony.

Garratt, however, despite being present at Bechtold's deposition, filed his own false affidavit that stated, in part:

> To whatever extent that Defendant Eddie Morris' affidavits and pleadings state facts that are expressly contradictory to those [including Bechtold's] affidavits, his statements are, to the best of my knowledge, information and belief, false.

Appendix "B".

Obviously, Garratt's own affidavit, which endorsed Plaintiff's false affidavit, was itself false.

But, there is even more. Garratt's affidavit also contended that Respondent Eddie Morris had used a check, paid to him by the Garratt law firm, in the amount of $12,650.00 on February 12, 1987, to "indirectly" close a purchase of a residential lot in Clarkston, Michigan, on February 13, 1987. Appendix "B".

This statement by Garratt was also proven to be knowingly and deliberately false. In fact, on February 13, 1987, the day after the check from the Garratt law firm for $12,650.00, Respondent Eddie Morris had actually written a check back to the Garratt law firm for $10,000.00. Appendix "B".

Garratt went even further when he signed a pleading dated December 7, 1989 in the lower court, which stated:

> Plaintiff contends that the $12,500 check, a marital asset owed by the law firm to Defendant during 1986 (before the divorce) was secured on February 12, 1987 so that $10,000 of that money could be used as the downpayment on that lot.

Appendix "B".

The signatory on the foregoing pleading was Petitioner, C. William Garratt. Appendix "B". However, Garratt knew that such allegations were patently false because Garratt's law firm cashed the $10,000.00 check from Respondent Eddie Morris dated

February 13, 1987. There was no way, then, for Respondent Eddie Morris to have used $10,000.00 of the $12,650.00 check towards a downpayment on any lot, because he had immediately tendered $10,000.00 back to the law firm.

Respondents filed a pleading detailing the falsity of such allegations, and actually attached a copy of the Morris $10,000.00 check which had been cashed by the Garratt law firm. Respondents also filed unrebutted affidavits of Respondents Edsel Morris and Donna Piotrowski, which demonstrated that Respondent Eddie Morris had no money in the lot. *See* Appendix "B". Yet, Garratt went ahead and filed his own affidavit that repeated such false allegations.

Garratt also falsely accused Respondent Eddie Morris of violating an injunctive order. In that instance, once again, Garratt's affidavit affirmed Bechtold's false claim in this regard that Respondent Eddie Morris had violated a divorce injunction by cashing the $10,000.00 check. The truth was that the injunctive order referred to in Plaintiff's pleadings had actually been entered in the divorce action on February 18, 1987, five days after the Morris check of February 13, 1987. Moreover, that injunction had actually been served on Garratt.

As the Court can see, Garratt's claim that his role was limited in terms of representation is also blatantly false. Garratt contends in his *certiorari* petition as follows:

> Petitioner thereafter undertook Plaintiff's representation for the limited purpose of aiding Plaintiff in obtaining discovery from Respondents, attending Plaintiff's deposition taken by Respondents, and attempting to defend Plaintiff against Respondents' voluminous motion papers.
>
> Petitioner's representation of Plaintiff lasted less than one month. That is, Petitioner's representation of Plaintiff terminated prior to the December 18, 1989 hearing on Respondents' dispositive motion for summary disposition and for sanctions. Plaintiff's new counsel appeared at that hearing.

See Petition of Writ for Certiorari, p. 4 (emphasis added).

Here, Garratt has blatantly misrepresented the facts. Indeed, Garratt extensively argued on Bechtold's behalf at the December 18, 1989 hearing. *See* Appendix "A-4, A-4.5 - 4.18", *e.g.*, 12/18/89 transcript at 87-109.

For example, Garratt frivolously argued (and signed false pleadings in support of the claim, *e.g.*, his affidavit) that Bechtold had an "oral" option to purchase a condominium that was owned by Respondent Edsel Morris. Despite the fact that the statute of frauds barred any such claim, Garratt at first argued that Bechtold did have an option, and then scrambled to change his argument when confronted by the court:

> Garratt: She exercised that right by giving him notice of the exercise of the option because it's a condo she can afford, not a more expensive one. What happened? Papa, Edsel Morris, won't sell the house, won't sell her back the condo.
>
> Morris: Your honor, there's no testimony to this. The man is making an argument that's incredible.
>
> Garratt: There's no testimony to the contrary.
>
> Morris: She testified she never talked to Edsel Morris.
>
> Garratt: The question is whether there are triable issues of fact. There's no testimony to the contrary.
>
> Morris: Oh, gees.
>
> Court: That's in the property settlement, right?
>
> Garratt: In the —
>
> Court: Which says that Edsel Morris was to sell it back to her and he wasn't a party to the agreement, was he?
>
> Garratt: Wasn't. Not — didn't sign it.
>
> Court: Well, OK then she didn't — she knew she didn't have an option then?

Garratt: No, she thought she did.

Court: Wait a minute.

Garratt: She was led by her ex-husband to believe —

Court: But she had a lawyer, though, she had a lawyer who looked at this property settlement agreement. And how can a property settlement agreement between you and me, bind McConnell?

Garratt: Well, she believed the representation of her husband at the time to be truthful.

Court: Well, I understand. But, OK, go ahead. That's why people have lawyers, so that when they sign something, they know what they're getting and what they're giving.

Garratt: That was — and I —

Court: But you see you told me that she had an option. She didn't have an option and you're a lawyer, and you know she didn't have an option.

Garratt: I wasn't her lawyer at the time, I was her —

Court: You're her lawyer now.

Garratt: She — I would readily concede that she did not have an option signed by Esdel Morris.

Court: But you just told me she did [*i.e.*, Garratt had just made a false statement, and presented a frivolous argument to the Court].

Garratt: Well, she had a right —

Court: No, you just told me she did have an option. You didn't say she thought she did, you said she did. Subsequently on my questioning, you, you say well, she thought she did.

Garratt: Your Honor —

Court: But you told me she did have an option and all the pleadings that I read, no where did she have an option.

Appendix "A-4, A-4.9-4.10" (emphasis added).

Here, Petitioner, a lawyer, was arguing for an oral option as to a piece of property. Moreover, Garratt signed an affidavit in support of such allegations, and continued to assert the argument, even after it was obvious that it was frivolous.

The Michigan Court of Appeals actually reversed a lower court that had refused to grant sanctions against a party that had made a (frivolous) claim to property based on an alleged oral agreement that was subject to the statute of frauds. *Dewald* v *Isola*, 180 Mich App 129; 446 NW2d 620 (1989).

Also of note is that MCLA 600.2591; MSA 27A.2591 does not require the signing of a pleading for a court to impose sanctions against an attorney or a party. That statute mandates sanctions against an attorney if the court finds a civil action was frivolous, which is precisely what the lower court concluded, which was firmly supported by the record. In fact, the lower court not only dismissed the case as frivolous and without merit, it also specifically found allegations "vexatious" and "spiteful". Appendix "A-4, A-4.34". Therefore, the action fell within all three subsections of the statute defining frivolous.

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the non-prevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least one of the following conditions is met:

> i. The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass or injure the prevailing party.
>
> ii. The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> iii. The party's legal position was devoid of arguable legal merit.
>
> (b) "Prevailing party" means a party who wins on the entire record.

MCLA 600.2591; MSA 27A.2591

Garratt was, consequently, also appropriately sanctioned as the attorney in a frivolous suit per MCLA 600.2591; MSA 27A.2591.

In any event, as the instant Honorable Court can now easily discern, Garratt's professed limited role is utterly false, as is his claim that his own representation of Bechtold ended prior to the December 18, 1989 hearing. The truth is that Garratt signed or filed a number of false or frivolous documents, and argued extensively on Bechtold's behalf at the December 18, 1989 hearing.

Also of note is that either Garratt or one of his associate attorneys appeared at every single court hearing on Bechtold's behalf. After Garratt used the ruse of "limited" appearances to take and defend depositions, a hearing was held before the lower court on December 1, 1989. Garratt's associate (once again) appeared and argued on behalf of Bechtold, and claimed that this was yet another "limited" appearance. However, when Garratt's associate indicated that he was not knowledgeable about certain facts in the case, the lower court took issue:

> Court: Just a minute. You told me last time when you were here, you said, "I'm appearing for this motion". This motion that's up today was included in that last motion. So, you are knowledgeable about what's going on.

Penskar: I'm not knowledgeable about all the facts —

Court: Of course you are.

Penskar: — that are in here.

Court: This was included in that last motion —

Penskar: Absolutely.

Court: — with one little excerpt from the last motion, which was included there. And you said you were appearing for that motion. And I'm going to say this. I will not permit lawyers to run around here saying, I'm here just for this motion, or I'm here just to take a deposition. If you're going to take a deposition in the case, you're in the case, and I want that clearly understood. No lawyer's going to come in just to take a deposition in this case or any case of mine.

Penskar: I established that the last time you —

Court: You established it, but somebody went and took a deposition after I established that.

Penskar: Absolutely. An appearance was filed, and now you're holding —

Court: There was an appearance?

Morris: No, Your Honor, it was a limited appearance given to us at the time of the deposition.

Court: I'm not going to accept limited appearances anymore.

Morris: That's what it was.

Penskar: And, you won't accept it, so Mr. Garratt and I are in the case until we withdraw with the court's permission, that's correct, we'll abide by that.

Court: OK, you're [*i.e.*, Garratt and his law firm] in the case as attorney.

Appendix "A-2, A-2.2" (emphasis added).

Obviously, Garratt's claim in his *certiorari* petition that his representation was "limited" is false, as is the claim that Garratt's representation terminated prior to the December 18, 1989 hearing. Petition for Writ Certiorari, p. 4. Garratt knows very well that he actually argued extensively on behalf of Bechtold at the December 18, 1989 hearing, *e.g.*, as to the alleged oral option referenced above.

Based on the foregoing, Garratt's participation and role in pursuing the frivolous claims asserted by Bechtold was so obvious that there was no way for Garratt to have avoided the mandatory provisions of MCLA 600.2591; MSA 27A.2591, once the trial court found, as it did, that the causes of action being pursued were frivolous.[2] Moreover, beyond question, Garratt actually signed and filed several pleadings that contained both false and frivolous material, subjecting him to mandatory sanctions pursuant to MCR 2.114.

During the sanctions portion of the hearing, Garratt (incredibly) argued the facts, once again, and again urged the court to accept the frivolous and false pleadings that had been filed (even though the court had already made its finding of frivolity). Appendix "A-4, A-4.31". Undeterred, Garratt then sarcastically referred to opposing

---

[2]Garratt also knew that Bechtold had actually stolen monies belonging to Respondent Eddie Morris. In fact, the Northern Michigan gift shop had been sold without notice to Morris, and Bechtold pocketed monies that belonged to Morris from the sale (even though Morris had previously written checks for as much as $2,000 to cover his share of expenses). The trial court rebuked Bechtold and Garratt for such conduct, and ordered the monies representing the share of Morris deposited with the Court, and then paid to Morris, plus interest from the date of sale. *See*, Appendix "B". The trial court also reached the "inescapable conclusion" that Bechtold "had a lot of help ... from some attorney" in preparing her frivolous 27 page Amended Complaint (Appendix A; 12/18/89 tr at 127). Garratt had represented that he had, in essence, no involvement with the filing of Bechtold's original Complaint (signed *in pro per*, with the Garratt law firm's address). However, both Garratt and his law firm were identified as Plaintiffs in paragraph 7 of the Bechtold Complaint, but not in the caption! Appendix "B". The trial court thus had even more evidence of Garratt's direct participation and misconduct as to the frivolous pleadings.

counsel, Kenneth McConnell, as "Judge McConnell". Appendix "A-4-4, A-4.33". Finally, Garratt terminated his argument at page 147, and the court proceeded to impose sanctions.

The lower court did not limit its sanctions to MCR 2.114. The court stated:

> As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful and really shouldn't be the basis of bothering the court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our courts have defined it. I'm going to order that sanctions be ordered.

Appendix "A-4, A-4.34" (emphasis added).

Clearly, by such language, the court was also awarding sanctions for the pursuit of frivolous claims. *See* MCLA 600.2591; MSA 27A.2591. Moreover, the court made an explicit finding that Plaintiff's attorney, namely Garratt, should have known about a release (that Plaintiff Bechtold had given as part of her divorce settlement). The court then went even further and made an additional specific finding that allegations in the pleadings were "vexatious and spiteful".

Moreover, the court's order specifically confirmed that sanctions were also awarded under MCR 2.625. *See* Appendix "C-1" to Petition.

MCR 2.625(a)(1) makes specific reference to MCLA 600.2591; MSA 27A.2591, and states as follows:

> Frivolous Claims And Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCLA 600.2591; MSA 27A.2591.

MCR 2.625 (emphasis added).

Thus, any review of the lower court's rulings clearly establishes that the court found that the pleadings were frivolous, and that the action had been brought for the purpose of vexation and embarrassment. Appendix "A-4, A-4.34". Moreover, a review of the pleadings and the record as developed firmly supported the court's conviction and ruling. Consequently, there was no error by the trial court or any of the Michigan appellate courts.

Only by badly distorting the actual record has Garratt been able to suggest non-involvement or a lack of due process. In reality, in summary fashion, we note as follows:

(1) Garratt did, in fact, sign many pleadings in the lower court, including his own affidavit (which was false), in support of Plaintiff's pleadings; MCR 2.114 does apply to motions and affidavits. *Hicks* v *Ottowell*, 174 Mich App 750, 755-56; 436 NW2d 453 (1989).

(2) As noted, not only was it established in the lower court that Garratt had signed and submitted a false affidavit, but he also procured and submitted another false affidavit of another attorney (McCann). Moreover, the record established that Garratt, Plaintiff's attorney, must have known this affidavit was false at the time he presented it to the court.

(3) Garratt's participation and involvement in the lower case far, far exceeded that depicted in Garratt's petition to this Court. In fact, Garratt sent his associate to the first several hearings before Garratt "stepped out from behind the curtain" and began taking depositions, signing pleadings, and arguing motions. Indeed, either Garratt or another attorney from his office appeared at every single hearing to argue on Bechtold's behalf, presenting positions found frivolous by the lower court, and thus mandating sanctions per MCR 2.625 and MCLA 600.2591; MSA 27A.2591, as ordered by the court. When the lower court rejected Garratt's ruse of "limited appearances" (Appendix "A-2, A-2.2"), Garratt then appeared

as counsel at subsequent hearings, including his arguments on Bechtold's behalf at the December 18, 1989 hearing; Garratt was, of course, appropriately sanctioned per the above court rule and statute, and per MCR 2.114, because he had signed false, frivolous and vexatious pleadings.

(4) Besides asserting false and vexatious positions, Garratt also signed his name to pleadings and an affidavit which asserted a claim to real property, namely a condominium owned by Respondent Edsel Morris, where the claim was clearly deficient and subject to a statute of frauds defense. The Michigan Court of Appeals has previously reversed the lower court's refusal to grant sanctions under such circumstances. See *Dewald* v *Isola*, 180 Mich App 129; 446 NW2d 620 (1989).

(5) Even after Plaintiff Bechtold had testified that she had no personal knowledge or evidence to support claims against Respondents Edsel Morris and Donna Piotrowski, but instead was "hoping" that discovery would turn up some evidence to support her claims (*see* Appendix "A-4, A-4.20"), Garratt continued to press and argue those claims to the court, and filed pleadings, signing his own name, in support of the frivolous claims.

Consequently, the record firmly supported the sanctions awarded against Garratt by the experienced, veteran trial judge. These sanctions were awarded only after a hearing of approximately 3½ hours during which both Garratt and his (new) "co-counsel" were given every opportunity to speak as long as they wished.[3]

In sum, the overwhelming case for sanctions was presented and fully briefed and argued to the Michigan Court of Appeals, and does not need to be duplicated here. The Michigan Court of Appeals correctly rejected those arguments in an opinion that is

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[3]Both attorneys were permitted to argue for the single plaintiff.

well-reasoned and structured. Indeed, the disingenuous and "slight of hand" assertions by Garratt that the Michigan Court of Appeals supposedly modified the trial court's basis for awarding sanctions; or that there was any lack of due process can be summarily rejected upon a review of the trial court's order and the Michigan Court of Appeals' decision. Not only is there no reversible error, but Petitioner actually "escaped" the full brunt of sanctions that should have been awarded (approximately $33,000), and instead was just sanctioned for $11,500.

ARGUMENT

I.

THE MICHIGAN SUPREME COURT PROPERLY INTERPRETED ITS OWN COURT RULE, MCR 2.114, AS WARRANTING SANCTIONS AGAINST AN ATTORNEY THAT FILES ANY FALSE DOCUMENT, INCLUDING ANY MOTION OR AFFIDAVIT, WITH A MICHIGAN COURT.

Garratt's argument, boiled down to its basics, is that even if he did procure and file false documents with a Michigan court, including false affidavits, he should not have been subject to the mandatory sanction provisions of MCR 2.114.

The Michigan Supreme Court has obviously disagreed with Garratt. Referring to MCR 2.113, the Court noted that the Michigan Court Rules, including those as to signing and verifying pleadings, do apply to "all motions, affidavits and other papers provided for by these rule." Michigan Supreme Court Op. at 5. Thus, the Michigan Supreme Court held that sanctions may be imposed against an attorney who files an improperly signed paper, even if it was not a pleading. Id.

In fact, the Michigan Court of Appeals had previously held, in February, 1989, before Petitioner's misdeeds in the case at bar, that MCR 2.114 did apply to motions and affidavits. *Hicks* v *Ottowell*, 174 Mich App 750, 755-756; 436 NW2d 453 (1989).

Consequently, and in any event, Garratt's argument that he was denied "due process" or lacked "notice" that he could be sanctioned for the filing of a false motion or affidavit is pure nonsense.

Moreover, upon analysis, the argument makes absolutely no sense. Should an attorney who files a false document with any court, for the purpose of that court relying on the material contained in the document, later be heard to argue that the filing did not

technically constitute a "pleading" subject to sanctions?

The harm that follows from a false document or a false pleading that is filed for purposes of reliance by a court is the same. Moreover, the wrong being perpetrated by the attorney is the same. In each instance, the attorney is trying to commit a fraud upon the court.

There really was no other logical way for the Michigan Supreme Court to react when asked whether the court rule that the Michigan Supreme Court had actually promulgated would prevent the filing of any false documents, even motions or affidavits (which most persons would consider pleadings) with a Michigan court.

In addition, the Michigan Supreme Court should be left to interpret its own rules, especially with regard to attorney misconduct that occurs in courts in the State of Michigan.

Finally, the sanctions were awardable both under MCR 2.114 and MCLA 600.2591; MSA 27A.2591, the latter provision not requiring any signed pleading.

II.

PETITIONER GARRATT, AN ATTORNEY, WAS NOT DENIED DUE PROCESS AFTER A FINDING WAS MADE THAT HE HAD FILED FALSE AND FRIVOLOUS PLEADINGS FOR THE IMPROPER PURPOSE OF HARASSMENT AND VEXATION.

Garratt has previously conceded, in his application to the Michigan Supreme Court, that due process did not require a full blown trial proceeding; Garratt has argued that due process mandated "a hearing to the extent that a party has a chance to know and respond to the evidence."

However, Garratt's entire claim that he had no opportunity to respond to the request for sanctions was and is specious. Both

Garratt and attorney Mark Kriger were given an opportunity to present lengthy arguments to the trial court at the 3½ hour hearing on December 18, 1989 (Appendix "A-4, A-4.5 - 4.18"). And, Garratt was afforded full opportunity to respond to the request for sanctions in any way he saw fit.

After substantial argument,[4] the transcript reveals that Petitioner left it up to the court to decide whether he could argue further on the amount of sanctions, where he said:

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[4]By this point, the lower court had already held Plaintiff's claims were frivolous, so sanctions were mandatory. MCR 2.114. Yet, Garratt actually encouraged sanctions by two absurd statements in which he lost any possible remaining credibility. First, Garratt tried to mislead the court by asserting that sanctions under MCR 2.114 were discretionary. The lower court "called" Garratt on this point, who then had to "back pedal" and admit his misstatement:

> MR. GARRETT [sic] [GARRATT]: ...The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of legal sense, it's not based upon existing law or a reasonable argument for the extension, modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.
>
> THE COURT: Let me just correct you on the one thing. You said the Statute is discretionary. I'm sorry, you said the rule is discretionary. It's not.
>
> MR. GARRETT: I'm sorry, I stand corrected.
>
> THE COURT: The rule says this, if a pleading is signed in violation of this rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.
>
> MR. GARRETT: I'm sorry, I'm sorry —
>
> THE COURT: No, it's mandatory — I knew it was mandatory, that's what I looked at.
>
> MR. GARRETT: You're right, and the distinction I should have made is that the standard for imposition are different between the statute and the court rule and the amounts to be imposed are different under the statute and the court rule. The statute talks about how you compute the amount, the court rules do not.

Appendix "A-4, A-4.29 - 4.30" (emphasis added).

Second, Garratt actually had the audacity to again rely on the McCann affidavit when arguing sanctions! Appendix "A-4, A-4.31".

> Until I know whether or not the court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

Appendix "A-4, A-4.33".

In the ensuing ruling awarding sanctions of $11,500, on the request for $33,000 worth of lawyer time defending the action, Garratt made no further effort to argue the matter of the amount of sanctions. Appendix "A-4, A-4.34". Apparently, Garratt saw no need to argue the amount where the award was one-third of the amount requested. Garratt may very well have (finally) concluded it was best to keep his mouth shut for once.

As to the amount of sanctions, Garratt claimed that Respondents' attorneys failed to demonstrate that their request for attorneys' fees was "reasonable". The Michigan Court of Appeals correctly ruled on this issue:

> Garratt also contends that the trial court erred in imposing $11,500 in sanctions because Kenneth McConnell, Eddie Morris and Kenneth Morris, attorneys for defendants, failed to prove that the hours they expended were reasonably necessary. We disagree.
>
> In imposing sanctions under MCR 2.114, the trial court may require a party to pay the opposing party's reasonable expenses and attorney fees incurred. MCR 2.114(E); Morris, *supra*, 281. McConnell submitted an affidavit stating that he spent fifty hours on the instant case. Eddie Morris submitted an affidavit indicating that he spent 141.6 hours on the instant case. A total of 213.60 hours were therefore spent on the instant case by these attorneys. Garratt himself, however, for the purpose of supporting his argument that he adequately researched the merits of plaintiff's complaints, submitted an

> affidavit stating that he spent more than 250 hours from November, 1989 to December, 1989 on the instant case.
>
> We find that in light of the fact that Garratt spent more than 250 hours on the instant case, the 213.6 hours spent by McConnell, Eddie Morris and Kenneth Morris were not unreasonable.

It can be seen from the quoted summary that the award of $11,500 on 213.6 hours means the trial court awarded $53.84 per hour for the hours expended by Respondents' attorneys. That award cannot be regarded as excessive, unreasonable or a denial of due process when the verified hours were for attorneys whose billing rates were $250.00 per hour (McConnell) or $150.00 per hour (Ed Morris and Ken Morris). (Affidavits were submitted to support the award. *See* Appendix "B").

In sum, Garratt's claims of a denial of due process are full of hyperbole, as are all of Garratt's claims here; and when subject to examination, are found to be much ado about nothing.

Next, Garratt is plainly wrong in asserting that the Michigan Court of Appeals erred by affirming on a ground not assigned by the trial court; and is plainly wrong in suggesting that sanctions can only be assessed against an attorney who signs a complaint.

The legal principle Petitioner alludes to — an issue is not properly preserved for appeal if it is not raised before, and not addressed by the trial court — is not involved in this case at all. That rule governs the conduct of a party who seeks review on appeal of an issue which that party did not raise in the trial court. *See, Joy Management Company* v *City of Detroit*, 183 Mich 334, 341; 455 NW2d 55 (1990).

What Garratt really claims is that the Michigan Court of Appeals erred in basing its affirmance on a ground not assigned by the trial court (Petition for Writ of Certiorari, pp 7-8). There are two fundamental rules which mandate the rejection of Garratt's argument. First, it is a familiar, often used principle of Michigan jurisprudence

that correct conclusions of a trial court can be affirmed for different reasons than those assigned by the trial court. *Langschwager* v *Pinney*, 351 Mich 473, 483; 88 NW2d 276 (1958); *Loving* v *Howard Lare, Inc.*, 344 Mich 97, 102; 73 NW2d 290 (1955). It is equally clear that a trial court will be affirmed if it reaches the correct result for the wrong reason. *Peninsular Construction Company* v *Murray*, 365 Mich 694, 699; 114 NW2d 202 (1962); *Reisman* v *Regents of Wayne State University*, 188 Mich App 526, 530; 470 NW2d 678 (1991).

Second, Garratt's argument that the trial court's oral pronouncements vary from the reasons cited by the Michigan Court of Appeals misses the mark entirely. That is because of the fundamental rule that a court speaks only through its judgment or decree. The rule was stated by the Michigan Supreme Court in *Tiedman* v *Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977), as follows:

> The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions.

In *Tiedman*, the court observed that Michigan's rule was in accord with other jurisdictions, stating (400 Mich 577, fn 4):

> 'His mere oral announcement of the decision and the grounds upon which it is based is not controlling. The whole matter is completely under his control, and is subject to be altered, changed, or even disregarded, until the written decree is approved and filed for record.' *Richmond* v *Richmond*, 326 Ill App 234, 239; 61 NE2d 573, 575 (1945); State, ex rel *Tufton* v *Superior Court*, 46 Wash 395, 398-399; 90 P 258 (1907); 24 Am Jur 2d, Divorce & Separation, Sec. 422. See, also, *Young* v *Young*, 165 Mo 624; 65 SW 1016 (1901).

We have shown that Garratt unquestionably signed motions and affidavits in this case; and knowingly submitted a false affidavit of another attorney. The Michigan Court of Appeals was entirely correct in concluding that an award of sanctions was appropriate to remedy Garratt's actions in this case.

Consequently, all of Garratt's appellate pleadings, including his *certiorari* petition to this Court, are founded either upon duplicity or upon "wishful thinking", rather than any solid legal arguments.

III.

THE MICHIGAN COURT OF APPEALS HAD NO OBLIGATION TO DECIDE PETITIONER'S "ALTERNATIVE" ARGUMENTS.

Garratt also argues that the Michigan appellate courts had a duty to address each of his "alternative" arguments. In fact, most of the issues raised by Garratt were directly answered by the Michigan Court of Appeals. However, and in any event, it is clear that appellate courts have no duty to discuss or rule on every claim made by counsel. This principle was stated by the Michigan Supreme Court in *Detroit National Bank* v *Blodgett*, 115 Mich 160; 73 NW 120 (1897). In denying a rehearing in that case, the Michigan Supreme Court provided this appraisal of its duty to pass on each issue raised by counsel (115 Mich 174):

> It has never been the practice of this court to discuss every claim made by counsel in briefs, and, indeed, space in the published reports would not admit of that course. But it is intended to discuss every question which may turn the scale one way or the other, or where it may be thought to be of interest to the profession.

A further expression of this principle is found in *Pichler* v *DeHate*, 125 Mich 247, 247-248; 84 NW 138 (1900), as follows:

> Thirty-four assignments of error are relied on, of which 28 relate to the rulings of the court in admitting or rejecting testimony. We find no error in the rulings. A statement of the points raised, and a discussion of them, would be of no benefit to the profession in the trial of future cases. We therefore refrain from discussing them.

Garratt cites no authority for its argument that the Michigan Court of Appeals must decide whatever claim Garratt raises. Of course, there is no authority for that proposition; and the cited cases establish the error of Garratt's position.

IV.

SHOULD PETITIONER GARRATT BE SANCTIONED FOR MAKING FALSE STATEMENTS IN HIS CERTIORARI PETITION TO THIS COURT?

There are so many false statements in Petitioner's *certiorari* petition that only some of the most glaring shall be briefly examined.

For example, Garratt maintains:

> ... Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Petition for Writ of Certiorari, p 5.

Yet, the exact language used by the trial court, at C-1.1 of the Appendix attached to Petitioner's Writ of Certiorari, establishes the falsity of Petitioner's claim:

> ... Plaintiff and her counsel, C. William Garratt, having signed pleadings that this court has determined contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this court also having found that pleadings signed by Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

Consequently, Garratt's statements to this Court were blatantly false. Moreover, Garratt's inference that the false motions and affidavits he filed with the lower court were "unidentified" is also false. As seen above, the trial court even commented on the falsity of the McCann affidavit that had been procured and filed by Garratt; and further commented that many of the allegations contained in pleadings that had been filed in the case, which were both argued by Garratt and then supported by his signed affidavit, were frivolous and scandalous. For Garratt to claim that he has no idea why he was sanctioned is utterly absurd and outrageous based on the record.

Yet another example of Garratt's duplicity to this Court is his claim that he only represented Plaintiff for the "limited purpose of aiding Plaintiff in obtaining discovery from Respondents, ... and attempting to defend Plaintiff against Respondents' voluminous motion papers." As seen above, the ruse of "limited appearances" was flatly rejected by the trial court in early December, 1989. At that point, the trial court demanded that the attorneys from Garratt's law firm arguing on Bechtold's behalf enter an appearance; and Garratt's associate, Mr. Penskar, explicitly stated that the law firm's appearance, including that of Garratt, was established. Consequently, Garratt has, once again, lied to this Court and misrepresented the lower court record.

Moreover, there is no way to reconcile Garratt's allegation that his role was limited, or that his representation of Bechtold ceased prior to the December 18, 1989 hearing, with the record and the truth. The December 18, 1989 transcript actually shows that Garratt extensively argued both the law and facts on Bechtold's behalf, contrary to Garratt's misstatements to this Court. Appendix "A-4, A-4.5 - 4.18".

Next, Garratt argues that the Respondents supposedly "changed their tack" by arguing in the Michigan Court of Appeals that sanctions should be held because Petitioner signed non-pleadings, even though those pleadings were "truthful". Petition for Writ of Certiorari at 5. However, there is no cite for this absurd statement,

and, in fact, Respondents never argued that Garratt was sanctioned for filing "truthful" pleadings or documents; instead, Respondents painstakingly demonstrated the false documents that had been filed by Garratt, including the McCann affidavit; Garratt's own affidavit; and motions or responsive pleadings that had been filed by Garratt. Once again, Garratt has lied to this Court.

Next, Garratt maintains that he "never signed any pleadings in this matter." Petition for Writ of Certiorari at 4. That argument has been shown above as utterly false, given the fact that Petitioner did sign motions and an affidavit; and such documents have been held to be pleadings under Michigan law. See *Hicks* v *Ottowell*, *supra*.

There are a host of other false statements and inferences in Petitioner's certiorari petition that can be discovered upon a more complete examination of the record. Query, then, whether this Court should sanction Garratt for making false statements in a pleading to this Court? This Court could very well use the instant *certiorari* petition as a means of communicating that it will not tolerate such duplicity.

CONCLUSION

There are no valid constitutional arguments or considerations presented in the Petition for Writ of Certiorari. Therefore, that petition should be denied. In addition, this Court should consider sanctions against Garratt due to the demonstrably false statements in the petition.

RELIEF REQUESTED

Respondents request that the Petition for Writ of Certiorari be denied, and that this Court award sanctions, including attorneys' fees, against Garratt due to the false statements in the petition.

Respectfully submitted,

MORRIS & DOHERTY, P.C.

By:_____
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MORRIS & MORRIS, P.C.

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Dated: March 7, 1994

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A-1.1
Complaint, 11/16/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

-vs.-

EDDIE M. MORRIS
Defendant.

89-909989 CZ 4/20/89
JDG: CHARLES KAUFMAN
BECHTOLD ELIZABETH A
vs.
MORRIS EDDIE M

ELIZABETH A. BECHTOLD
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

COMPLAINT

Plaintiff states as and for her Complaint against Defendant Eddie M. Morris, as follows:

Common Allegations

1. Plaintiff Elizabeth Bechtold is a resident of Oakland County, Michigan.

2. Defendant Eddie M. Morris, who is and since 1980 has been an attorney practicing law in the State of Michigan, is a resident of Wayne County, Michigan.

3. The amount in controversy in this action exceeds $10,000 and is otherwise within the jurisdiction of this Court.

4. In or about July, 1981 Plaintiff and Defendant commenced employment with C. William Garratt, P.C., also known as C.

5. In August of 1981 Defendant fraudulently induced Plaintiff to marry him by, among other things, misrepresenting that he had no physical disabilities or other problems that could interfere with the parties' plans to have children.

6. In or about October, 1984, C. William Garratt & Associates, P.C. ceased, whether entirely or for the most part, the active practice of law; at that time, Plaintiff and Defendant and certain other former employees of C. William Garratt & Associates, P.C. commenced employment with Garratt & Morris, P.C.

7. The policies and terms of employment at Plaintiff Garratt & Morris, P.C., which Defendant Morris accepted and to which he agreed, included, inter alia:

> (a) a prohibition against any intimate relationship between any lawyer employed by the law firm and any unrelated person employed by the law firm, excluding only the husband/wife relationship, so long as it might continue to exist, that existed between Plaintiff and Defendant.
>
> (b) a prohibition against any lawyer employed by the law firm seeking, having or appearing to have or seek, an intimate relationship with, or displaying sexist attitudes toward, any unrelated person who was employed by the law firm or furnished goods or services to the law firm or its clients, whether as a court reporter, an independent contractor or otherwise;
>
> (c) a prohibition against any lawyer employed by the law firm rendering legal services to any person without the prior knowledge and consent of Plaintiff C. William Garratt with respect to, inter alia, the identity of the client, the subject matter and terms of the representation, and the consideration that would or might be received for such services.

8. In or about January, 1987, Garratt & Morris, P.C., ceased, whether entirely or for the most part, the active

* * *

C. granting Plaintiff independent equitable relief as requested above and whatever other equitable relief to which Plaintiff may be found to be entitled; and

D. awarding Plaintiff whatever other relief to which this Court finds Plaintiff to be entitled.

Elizabeth Bechtold
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, MI 48013
645-1450

Dated: November 16, 1989
0956b

Appendix A-2
A-2.1
Transcript, 12/1/89 Hearing
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

Civil Action No.
89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

MOTION — VOLUME II

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, December 1, 1989, at 1601 City County Building, Detroit, Michigan.

APPEARANCES:

ELIZABETH A. BECHTOLD
ALAN PENSKAR
300 E. Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Plaintiff

KENNETH G. MORRIS
2000 North Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing on behalf of Esdel Morris and Donna Piotrowski

EDDIE M. MORRIS
2000 N. Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

MR. PENSKAR: Absolutely.

THE COURT: — with one little excerpt from the last motion, which was included there. And, you said, you're appearing for that motion. And, I'm going to say this. I will not permit lawyers to run around here saying, I'm here just for this motion, or I'm here just to take a deposition. If you're going to take a deposition in the case, you're in the case, and I want that clearly understood. No lawyer's going to come in just to take a deposition in this case or in any case of mine.

MR. PENSKAR: I established that the last time you —

THE COURT: You established it, but somebody went and took a deposition after I established that.

MR. PENSKAR: Absolutely. An appearance was filed, and now you're holding —

THE COURT: There was an appearance?

MR. MORRIS: No, your Honor, it was a limited appearance given to us at the time of the deposition.

THE COURT: I'm not going to accept limited appearances anymore.

MR. MORRIS: That's what it was.

MR. PENSKAR: And, you won't accept it, so Mr. Garrett and I are in the case until we withdraw with the Court's permission, that's correct, we'll abide by that —

THE COURT: Okay. You're in the case as attorney.

MR. MORRIS: And, my point is, your Honor, there's no point in holding up my money. They never got a stay of Judge Rashid's divorce decree which gave me the 25 percent interest. How can they ask me for $2,000 in January and then keep $5,000? It's crazy.

THE COURT: Ostensibly, it looks that way. I don't want to make any precipitous orders just because it does look like it. I did set this for December 18th —

MR. PENSKAR: That's correct.

THE COURT: — which is a Monday when I'll take a lot of time to try to sift out a lot of these motions. And, I did ask this; are there any other pleadings you want to be filed? The plaintiff did say, yes, she did want to file an amended complaint. I said, okay, and I did get that amended complaint, I understand. So, we're now on the amended complaint, which has been cleaned up from the original complaint.

MR. PENSKAR: That's correct.

THE COURT: Where it talks about parties being

Appendix A-2
A-2.4
Transcript, 12/1/89 Hearing

REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 21, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, December 1, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This 6th day of December, 1989.

Appendix A-3
A-3.1
Order, 12/4/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

Honorable Charles Kaufman

Civil Action No.
89-909989-CZ

Elizabeth A. Bechtold
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

Kenneth B. McConnell (P17326)
Of Counsel To Eddie M. Morris

E. Michael Morris (P31547)
In Pro Per

Kenneth J. Morris (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER RE DEPOSIT OF FUNDS

At a session of said Court held in the
City County Building, Detroit, Wayne County,
Michigan on December 4, 1989

Appendix A-3
A-3.2
Order, 12/4/89

PRESENT: HONORABLE CHARLES KAUFMAN
Wayne County Circuit Judge

This matter having come on for hearing on December 1, 1989;

IT IS HEREBY ORDERED that Plaintiff be, and she hereby is, ordered to deposit with the Clerk of the Wayne County Circuit Court the sum of $5,439.07, which sum the Clerk shall deposit into an interest bearing account until further order of the Court.

/s/ Charles Kaufman
Charles Kaufman
Wayne County Circuit Judge

Approved as to form:

/s/ Elizabeth A. Bechtold
Elizabeth A. Bechtold
Plaintiff

/s/ Eddie M. Morris
Eddie M. Morris
Defendant

/s/ Kenneth McConnell / EMM w/ per
Kenneth McConnell
Attorney for Defendant
Eddie M. Morris

/s/ Kenneth Morris / EMM w/ per
Kenneth Morris
Attorney for Defendants
Edsel Morris and Donna Piotrowski
0987b

Appendix A-4
A-4.1
Transcript, 12/18/89 Hearing
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

Civil Action No.
89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

MOTION

Before the Honorable Charles Kaufman, Circuit Judge, on Monday, December 18, 1989, at 1601 City County Building, Detroit, Michigan.

APPEARANCES:

C. WILLIAM GARRATT
MARK KRIGER
300 E. LONG LAKE ROAD
BLOOMFIELD HILLS, MICHIGAN 48013
Appearing on behalf of the Plaintiff

KEN MCCONNELL
EDDIE MORRIS
2000 N. WOODWARD AVE
SUITE 100
BLOOMFIELD HILLS, MICHIGAN 48013
Appearing on behalf of the Defendant, E. Michael Morris

KENNETH J. MORRIS
27840 PLYMOUTH ROAD
LIVONIA, MICHIGAN 48150
Appearing on behalf of the Defendants, Edsel Morris and Donna Piotrowski

Appendix A-4
A-4.2
Transcript, 12/18/89 Hearing

TYPED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

[PAGES 24-26]attorney should do when he filed that affidavit. He should also have filed a plaintiff's answer to motions, defendants to disqualify plaintiff's attorney that was filed by Eric McCann in Oakland County. In the case in which Garrett was of counsel, Eric McCann states in this pleading which Mr. Garrett had and he didn't file it with the affidavit, he said, "Eric J. McCann never represented C. William Garrett and never represented Elizabeth Bechtold." I think that — he says she did consult with him, he never represented her. Now, he's filing an affidavit and turning to the pleading filed in Oakland County which he received. This is bad faith, your Honor, on Mr. Garrett's part, and I think it calls for sanctions.

THE COURT: Look —

MR. MORRIS: To say that this man is the attorney when he received a pleading where this man was allowed to proceed because of filing the pleading saying that he never was her attorney.

THE COURT: It does vary, doesn't it?

MR. MORRIS: Yes.

MR. GARRETT: May I see the affidavit for a moment?

THE COURT: It's not an affidavit, it's —

MR. MORRIS: It's the pleading. And, if you'll note, Mr. Garrett was on the front of it. He hadn't received.

MR. GARRETT: Hold on a second. If I take a look at it for a second, I can explain it.

THE COURT: Sure.

MR. MORRIS: Your Honor, also I would —

THE COURT: We need consistency in what Mr. McCann says, where he says he represented her as — on this affidavit that you filed in this case, and there's a pleading, apparently, filed by him in which he says he never represented her.

Appendix A-4
A-4.4
Transcript, 12/18/89 Hearing

MR. GARRETT: Well —

THE COURT: It's an inconsistency.

MR. MORRIS: Your Honor —

MR. GARRETT: Excuse me. It's an inconsistency. This document, which has been handed to you, hasn't been verified. Mr. McCann and Mr. Hafford (ph) of my understanding represented Ms. Bechtold at all times during the course of —

THE COURT: Well, I understand —

MR. MORRIS: Your Honor, I'm going to object to this.

MR. GARRETT: — the underlying divorce case.

MR. MORRIS: He's saying that this attorney is not to trusted when he files documents.

THE COURT: Okay.

MR. MORRIS: I'm going to go ahead, your Honor, and I would just point out that as far as the questions —

MR. GARRETT: It may mean — it may be that what Mr. McCann intended to convey by that pleading was that he never represented Ms. Bechtold in Oakland Court. It's clear — even the bills that he — that she received from —

THE COURT: Well, I'm not going to go into that. He says he never represented her, so we'll take his word. Now, I'd rather he explained it and you tell me what you think he meant, because your evidence what you think he meant is objectionable. I never let anybody read someone else's mind.

MR. MORRIS: And, I feel very strongly that if hadn't attached this — this was part of the pleadings he received, his name is on the file.

THE COURT: Yeah, you've told me that.

MR. MORRIS: He should have attached this; if he didn't attach

it I believe it's bad faith and should call for sanctions. Further, the — Mr. Kriger said that

[PAGES 87-110]lot. There are issues of fact here, your Honor. The only difficult issue for you is whether or not the Count grounded in equity can survive. I don't think there is any question that the Counts grounded in damages survive this hearing. Whether or not the Count in equity survives is a more difficult decision. I believe that there's good excuse for the delay and that there has not been detrimental reliance. But I don't think on the others, it's even a close call.

MR. GARRETT: Let me add a couple of things, if I may, your Honor, to try to clarify the facts. First, and I don't intend to know everything that's been written in all of these pleadings because of the rapidity with which they've been both received and attempted to be responded to. This is not a lawsuit of grave public importance. This is not a lawsuit that involves millions of dollars. This is a lawsuit between Ms. Bechtold on the one hand and her ex-husband and his father and sister on the other hand. I dare say that in all your years on the bench, you have scarcely seen an occasion wherein a lawsuit of this apparent lack of magnitude, so many pages have been filed in such a short period of time. Now, we've heard from Eddie Morris today that in the past month he spent 140 hours on this case. Now, I want you to remember, you make whatever decisions you're gonna make, I urge you to remember that at all times from January 1 of '87 —

MR. MORRIS: I'm going to have to object, your Honor. This is not adding something, this is argument.

THE COURT: Well, that's what everything is.

MR. MORRIS: This is jury argument.

MR. GARRETT: That's the whole problem with this hearing. I agree, it is jury argument.

THE COURT: If you're going to admit that, save it for a jury, because nobody has admitted that yet. Neither Mr. Kriger, nor

either of the Morrises have said this is jury argument. If it's jury argument, I don't want to hear it. I want argument based upon whether or not there is a cause of action pled here. Whether or not looking at the light most favorable to the plaintiff, she doesn't have a cause of action or she does. That's the issue, not jury argument, this poor woman and all that kind of stuff. Or this poor man that's put through all this. I don't want to hear that. Just give me some facts based upon either admissions or based upon what's been proven. That's all I want.

MR. GARRETT: Throughout the time period of January of '87 and for that matter, years before that until August 17 of '88, he was, for all practical purposes, her employer.

MR. MORRIS: Your Honor, excuse me, he's repeating Mr. Kriger's argument. He was supposed to add things. You have two lawyers arguing for one party in the court and all he's doing now is repeating. I thought he was supposed to add. The court rule doesn't give a party a right to come into court and have two attorneys to speak on the same issues.

THE COURT: Okay. You may proceed, but try to give me things that Mr. Kriger didn't argue.

MR. GARRETT: Please keep in mind that if he could spend 140 hours a week in the last month on this case or 140 hours a month, he probably spent 280 hours a month trying to browbeat this lady as her employer and this woman in the affidavits that you have in front of you, are not from Bill Garrett only — who are they from? They are from Mark Evans, at the time Garrett and Morris & Evans. They are from Alicia McCook who throughout the period of time was a secretary of the law firm, doing principally my work. They are from her twin sister and her twin sister's husband, who for 15 years has been a Pontiac policeman. They're from Eric McCann, who's a lawyer of approximately 20 years experience, although principally Oakland County work, Mark Haffley (ph), an associate, Mr. McCann and Mr. McConnell for years, partners in the Hartman, Bar, Howell, McConnell, McCann & Kincep (ph) firm.

Appendix A-4
A-4.7
Transcript, 12/18/89 Hearing

I've got the names misarranged, but the point is, that there is — has been a very short period of time, a substantial showing, I think presented to this Court, in support of two things. One, the several damage Counts that are contained in the Complaint and the equity Count that's contained in the Complaint. All of the case law that he cites concerning latches requires two elements. One unreasonable delay and detrimental reliance upon the delay. Are we to believe that he would not have remarried had he known of this lawsuit? Are we to believe that he would not have purchased a new house had he known of this lawsuit? That and that alone seems to me, should put an end to this motion. Now let's talk for a moment about tender. You cannot tender what you don't have. She could not tender, your Honor, what she got under the divorce judgment in 1987, because she had invested the proceeds in a new home, that as a result of the divorce judgment, apparently the former home was sold to a third party. You can't resurrect that part of the status quo ante. And in addition we think that we've presented to you a plausible case that even if she had the present ability in '87 or '88 or '89 to tender back what she had, it would have been futile. You say, well, how can you persuade me that it wouldn't be futile. Merely the events of February 17 and 18, 1988, ten months after the divorce judgment. These are events that Mr. Kriger referred to, but with — because he's new on the case, he got them mixed up a little bit. On February 17, '88, she goes to Eddie Morris to borrow $500.00 to pay a Hudson's and a Detroit Edison bill. He owed her $1,500.00 in July, four or five months down the road under the divorce judgment. He says, oh, no problem, I don't want to loan you the money, I'll just prepay the $1,500.00. He then says, by the way, I've got a friend who owns a lot in Oakland County that I might buy. Now that's February of '88. It's important, because his deposition testimony in this case, indicates that he, "took the lot over", from his sister in June of '87. But he tells her that he has a lot in Oakland County that a good friend owns that he might be interested in buying. He then hands her a check with the endorsement on it, which unwittingly she signs. There's no indication as to who the beneficiaries are to be of the release.

THE COURT: The beneficiaries of what?

MR. GARRETT: Of the release language on the check. There's no indication as to who the beneficiaries are to be, there's no reference to Edsel Morris, no reference to Donna Piotrowski. It talks about claims related to the marriage and property settlement. What is that? I mean, I'm not going to recite the law concerning parole evidence, but your Honor is well aware that where there are ambiguities, that could be proven by parole and even when there aren't ambiguities, you can introduce evidence to show fraud. So she signs the check, she deposits it, then starts scratching her head and asks him for some more information. He refuses to talk to her. She sends her sister down then to the records — to check the records of Independence Township with a whole bunch of people who might be his friends. His — her sister, the policeman's wife, finds a lot in Deerwood, in the sister's name. The next day, February 18th, she tenders her check for $1,500.00 back to him. She can't give him his check back, because he tricked her into depositing it. She tenders her check back to him for the same amount of money, together with a note, saying, in essence, you cheated me, I rescind the deal. The word rescind isn't in there, but it doesn't need to be. We all know. What's he do? Says, in essence, go fly a kite. Now, it was clearly futile for her to retender the $1,500.00, but she did so. I suggest it was equally futile for her, or there's an issue of fact, as to whether it was equally futile for her to retender what she got out of the divorce judgment if she had a legal obligation to do so under circumstances where he had created a situation so it was impossible. She had under the divorce judgment, a right to buy back her old condo.

THE COURT: Is that in the divorce judgment? That wasn't my understanding throughout the pleadings.

MR. GARRETT: Well, I'm sorry.

THE COURT: That was an oral agreement by Edsel?

MR. GARRETT: Not at all. Not at all.

THE COURT: That's what she claims.

MR. GARRETT: Not at all.

THE COURT: That's what the pleadings say, your pleadings.

MR. GARRETT: True, your Honor, not at all. They will concede that the property settlement agreement contained an expressed right on her part to buy back her old condo. It's in black and white.

THE COURT: That's not what you said though, in your pleadings. Your pleadings said that they agreed to do it orally, and then she gave that up. That's what your pleadings say

MR. GARRET: I don't think so. But, if they do, they're wrong.

THE COURT: Okay.

MR. GARRETT: She exercises that right by giving him notice of the exercise of the option, because it's a condo she can afford, not a more expensive one. What happened? Papa, Edsel Morris, won't sell the house won't sell her back the condo.

MR. MORRIS: Your Honor, there's no testimony to this. This man is making an argument that's incredible.

MR. GARRETT: There's no testimony to the contrary.

MR. MORRIS: She testified she never talked to Edsel Morris.

MR. GARRETT: The question is whether there are triable issues of fact. There's no testimony to the contrary.

MR. MORRIS: Oh, gees.

THE COURT: That's in the property settlement, right?

MR. GARRETT: In the —

THE COURT: In which says that Edsel Morris was to sell it back to her and he wasn't a party to the agreement, was he?

MR. GARRETT: Wasn't. Not — didn't sign it.

THE COURT: Well, okay, then she didn't — she knew she didn't have an option then?

MR. GARRETT: No, she thought she did.

THE COURT: Wait a minute.

MR. GARRETT: She was led by her ex-husband to believe —

THE COURT: But she had a lawyer, though. She had a lawyer who looked at this property settlement agreement. And how can a property settlement agreement between you and me, bind McConnell?

MR. GARRETT: Well, she believed the representations of her husband at the time to be truthful.

THE COURT: Well, I understand. But, okay, go ahead. That's why people have lawyers, so that when they sign something, they know what they're getting and what they're giving.

MR. GARRETT: That was — and I —

THE COURT: But you see you told me that she had an option. She didn't have an option and you're a lawyer, and you know she didn't have an option.

MR. GARRETT: I wasn't her lawyer at the time, I was her —

THE COURT: You're her lawyer now.

MR. GARRETT: She — I would readily concede that she did not have an option signed by Edsel Morris.

THE COURT: But you just told me she did.

MR. GARRETT: Well, she had a right —

THE COURT: No, you just told me she did have an option. You didn't say she thought she did, you said she did. Subsequently on my questioning you, you say well, she thought she did.

MR. GARRETT: Your Honor —

THE COURT: But you told me she did have an option and all the pleadings that I read, nowhere did she have an option.

Appendix A-4
A-4.11
Transcript, 12/18/89 Hearing

MR. GARRETT: There is a written portion of the property settlement agreement signed by Eddie Morris —

THE COURT: Well, that you told me now.

MR. GARRETT: — giving her that right.

THE COURT: To get it back from Edsel?

MR. GARRETT: Yes, your Honor. Give me a copy of — if somebody can give me a copy —

THE COURT: Well, okay, if you say that, I'll believe you. But you and I know as lawyers that that does not give her an option, if Edsel Morris had title.

MR. GARRETT: Well, if somebody will show me a copy —

THE COURT: If I agree to give you an option to buy something that McConnell owns, I sure can't bind McConnell. And you should know that my agreement doesn't give you an option.

MR. GARRETT: You're not going to hear an argument from me that there might not be a defense to its enforceability under the Statute of Frauds, okay? But the bottom line is, is that the property settlement agreement, that her about to be ex-husband drafted and that she signed, okay, provided that she have a specific right to buy back this condominium. As a result of her inability to exercise that option for whatever factual or legal reason may be attributed to it, she had to buy a more expensive home, she put all her money into a more expensive home, so she was in a position where she was incapable of tendering it back.

THE COURT: Did she do anything to try to exercise that supposed option?

MR. GARRETT: Yes.

THE COURT: What did she do?

MR. GARRETT: She — she sent, as I understand it, to Edsel Morris, through Eddie Morris, a written letter exercising the option.

THE COURT: That's nowhere in the pleadings, now, is it? In all these piles of pleadings I've got here, I don't see it there.

MR. GARRETT: Well, it may not be there. I don't quarrel with the Court on that point.

THE COURT: I think you gave me everything that you could. I thought you did.

MR. GARRETT: Please keep in mind that they had from November 17th to December 11th to file their masses of papers and we had from noon or later, because some of their papers were late, noon or later on December 11th until the close of business on December 14th to come up with what we could. With regard to Eddie Morris's argument of lack of materiality, I think the *James* case, which is cited on Page 10, it's 57 Mich App 452, 1975, clearly indicates that given the economics involved in this case, the failure to disclose a $10,000.00 equity in anything, whether it's the lot or a check or anything else, the failure to disclose the $10,000.00 equity is not only material, but in that case it was held to be a fraud on the Court. Next, one of the depositions that you don't have before you is the deposition of Wendy Meyer, as it hasn't been transcribed and filed yet. Certainly there are some things in that deposition that helped the Defendant's case. But there were also some things in that deposition that help the Plaintiff's case. In that deposition, Wendy Meyer admits under oath that Katherine Strutz's (ph) affidavit, paragraphs A and B of the title paragraph two or three that she admits that approximately half of Ms. Strutz's (ph) allegations are true. You have Donna Piotrowski, the sister, who's never been on the lot, ever in her life, apparently, she refuses to submit to a deposition. You have her husband, Ralph, of many years, who like her lives in Westland, they each have their own separate businesses in Westland, they've got their kids in Westland schools, we can't get his deposition. His deposition is obstructed by them. They refuse to produce him for deposition just like Donna Piotrowski and Edsel Morris. But, what do we know? Well, Ralph's name isn't even on the deed. The property is never conveyed in terms of record title, from Donna Piotrowski to Eddie Morris with or

without Ralph's participation, even though by his own admission in his deposition, he "took the lot over", in June of '87. Now, when did he really take the lot over? We just got after 5:00 on Friday of last week, the last business day prior to this hearing, a copy of the check establishing that contrary to his expressed deposition testimony that he never paid any money to anybody concerning this lot, he wrote a $1,000.00 check to the realtor on January 30, 1987. That was before the divorce case was even filed. The closing takes place literally two weeks later. Curiously, your Honor, we don't have a purchase agreement that's dated. We don't have a January 30 purchase agreement, the Defendant notes to his apparent surprise at his deposition that he hasn't produced a purchase agreement for the lot. Says he'll give it to us, he never does. We have to try to get a copy from Durbin. Durbin furnishes a purchase agreement that's undated. February blank, '87.

THE COURT: The divorce was granted when? April '80 —

MR. GARRETT: April 29.

THE COURT: April '87?

MR. GARRETT: April 27, your Honor. So given those circumstances, I think you have to view it with the utmost suspicion any testimony, controverted or otherwise, from the Defendants as to the allegations that the Defendants conspired to defraud her with regard to marital assets. What do we have? We've got the interest in the law firm, we've got $10,000.00 equity in a lot, okay? He says at the time, to numerous people that he doesn't have an interest in the law firm and that it's worth nothing. What's he say now it's worth? Does he say now he has an interest in the law firm and it's worth something? Does he say it's worth $31,000.00, does she say it's worth $80,000.00? We have a $10,000.00 equity someplace, whether it's in a check from the law firm on December 12, or a right, an interest, an equity, a beneficial interest in the lot. Defendant Eddie Morris files an affidavit in this case. Very, very curious affidavit. It says, I never had a legal interest in the lot. I underlined the word legal, it's not underlined in the affidavit. But

you and I know what's that a way of saying, I had a (inaudible word) of interest all along, but I don't want to admit it under oath. Because if I do admit it under oath, then I admit I cheated the woman. I don't want to do that. So it seems to me that under those circumstances, it would only be appropriate that the Court allow the balance of discovery to be taken, then if there are matters that are right for summary disposition, then let them be brought on for hearing in a normal course where everyone's not rushing pell-mell and head-long into a sea, as it were.

THE COURT: Would everybody agree that when you were here in November, that December 18th would be sufficient time? Everybody agreed to that.

MR. GARRETT: And it might have been, your Honor, had, had they submitted to discovery. I am accused of bad faith for having spoken, what, 50 times on the record during the course of Ms. Bechtold's deposition, but keep in mind she never failed to answer any question put to her. By contrast, Mr. McConnell objected or interceded in Eddie Morris's deposition, 65 times, and I think we've counted, what is it, 48 questions or something like that, that he refused to answer concerning the subject of release, coercion, fraud. Your Honor was never asked squarely on November 17th, can't the Plaintiff or can the Plaintiff not take Edsel Morris's and Donna Piotrowski's depositions. If you read the transcript, the language on which the Defendants rely is kind of sandwiched in and Your Honor is saying, I'm telling you I want discovery on the subject of releases. Now I've got some other motions to hear. What Eddie Morris slips in between your Honor's comments are and they can't take — and they can't harass my family, or words to that effect. So he doesn't say and they can't take Edsel Morris's deposition, and they can't take Donna Piotrowski's deposition and Mr. Penskar, being as new as he was, as to the facts, didn't say, well, wait a minute, time out, what's that mean, does that mean we can't take the deposition of his new wife, which we weren't seeking anyway. Was that his family member that he's talking about? So, here you have a refusal to answer about four dozen questions in Eddie

Morris's deposition, and an absolute refusal to produce Donna Piotrowski for deposition, and another refusal to produce Edsel Morris for deposition, and a motion for protective order when we subpoena her husband, Ralph Piotrowski for a deposition. Clearly, an attempt by the Defendants not to let the facts (inaudible words). And I think that under the circumstance is it's only fair and appropriate that you deny without prejudice the motion for summary disposition. It seems to me that even if your Honor is convinced that all of the necessary discovery has been taken, there are certain aspects of this motion which have as a matter of law got to be denied, even if you believe as you know the law not to be, even if you would believe everything that they say and nothing that she says. Well, you've got to deny that portion of the motion for summary disposition that seeks any relief for Edsel or Donna. They're not named in either one of the releases. They're just not named. There is no indication that they were intended or (inaudible word) third party beneficiaries (inaudible) in those releases. What else has to say even if you believe everything the Defendants have to say? You also have to believe in a case everything that occurred from and after approximately noon on February 17, 1988. Because there's no release that she signed of any sort after noon on February 17, '88. Next, what do I think if you believe just a morsel of what she says is true you have to leave in the case, you have to leave in the case everything because she did tender back the $1,500.00, they don't deny that. She tendered it back immediately, as soon as she learned that he pulled a fast one on her with regard to the lot. What else do you have to leave in the case, given her tender back $1,500.00, even though it was futile, and we've now proven that it was futile.

THE COURT: Was there any other money by the terms of the divorce judgment that she was supposed to get after this 1,500?

MR. GARRETT: No, I don't think so. I'm not sure. I can't — But the answer is, no more money but there were still other executory acts, some of which he still hasn't performed.

THE COURT: Like what?

MR. GARRETT: Well, one of his undertakings in the divorce judgment that he, at no cost to her, would pursue her ex-husband of many years. I mean, she had a prior marriage of about 16, 18 years ago, in which her ex-husband owes her several thousand dollars of child support. She had to do, so far as we can tell, one thing. Mark Evans and Bill Garrett had to beg him, I suppose, to allow her to take her maiden name.

THE COURT: She can do that anyway.

MR. GARRETT: Okay. Now, what else? So she tenders back the $1,500.00 on February 18th, that she got on February 17th, what's that mean that that has to be left in the case? That means that everything is left in the case from and after either April 20 or April 29, 1987, okay? Because — and you've got to decide which is the operative date, the date of the property settlement agreement or the date of the divorce judgment. Then the question is, as we look back, then the question becomes, is there any evidence before the Court as to whether or not the release language in the judgment may be avoided by her either in law or in equity and I use avoided in the lay sense of the term. Even if she can't — even if you were to rule as a matter of law there were latches one, reasonable delay is a matter of time and two, detrimental reliance by the Defendants on the delay as to which I think there's absolutely no credible evidence. Even if you were to find that as a matter of law, that takes care of one Count of an eight, nine, ten Count Complaint. All of the other Counts, of which (inaudible words) in damages. She's still entitled to sue him for damages. In addition she's entitled to sue him for breach of the property settlement, in which I should note, because your Honor will recognize the significance of it, was incorporated but not merged in the divorce judgment. So her rights with regard to the property settlement agreement do not as a matter of law have to go back to the divorce court and never did if the divorce judgment that Eddie Morris prepared had said the property settlement agreement is merged, then arguably her rights to seek independent relief with regard to that agreement would be exclusively from the divorce court, but that is exactly what the property

settlement agreement does not say. Next, let's get this business of Garrett versus Garrett out of the way. At the time I submitted my affidavit to this Court on Thursday, I said, if the language, if the release language in Garrett versus Garrett is the same as this case, then Eddie Morris must have pulled from my divorce papers. I went back — I finally had a breather on Friday, went back and took a look. It isn't. There's no significant similarity between the two items of language, okay? This — a lot of the argument that you have heard from the other side is an attempt to fabricate facts based upon things that they think they learned from the other side. The first time we heard that they came up with the argument that Garrett drafted the divorce language in *Morris* vs. *Morris* was following his review of her notes in discovery, which if you read it, might suggest that; however, she's explained without any controversion by the other side that all that was, was a note by her telling — in which Eddie Morris told her what I supposedly said. I didn't say it. My affidavit says I didn't tell him that. So you have a situation where one of her employers during a period of time is constantly browbeating her to the dismay of not only her, but you can imagine what was going on in the office, a small law office, and this is a case that I believe under all the facts and circumstances entitles the plaintiff to a trial. Thank you.

THE COURT: Why don't we take a short recess they reply.

(Whereupon a short recess was had.)

THE COURT: Before you give a reply, I'm interested in your reply, not only in what you may want to say about the release, but also — just tell me what about after 4/29/87, the date of the judgment.

MR. GARRETT: Can I add 25 words, because something occurred to me in the hall? Literally, 25 words.

THE COURT: Sure.

MR. GARRETT: Thank you. The event that allowed her the freedom of mind and action to bring this lawsuit was the sale of the

Northern Michigan business and property, which closed in late March or early April of 1989, just two or three weeks before this lawsuit was brought. Please think about the allegations that she has made.

THE COURT: I'm sorry, when in '89 did you say?

MR. GARRETT: Late March or early April of '89, just two or three weeks before the lawsuit was brought. Please keep in mind the allegations that she and her sister made about Defendant Eddie Morris's threats and harassment about them and their mother, who sold the place of living and who sold livelihood was that building in Bel Air.

THE COURT: That's what gave rise to the $5,400.00, due to the Defendant?

MR. GARRETT: Right, that's the most he is entitled to. He never breached a contract concerning that if his mama up in Bel Air, okay, is not entitled to any money for her lost wages or lost income, that most he's entitled to as a result of the distribution. And it was that sale and therefore, her freedom, and her sister's freedom, and their mother's freedom from further harassment by that that permitted her the freedom of action to start this case.

MR. MORRIS: Thank you, your Honor. As for acts after 4/29/87, there's another release of course, 2/88 that releases me from conduct. It's my opinion, relating to the marriage or property settlement, to that point in time, after that —

THE COURT: That was on the back of the check?

MR. MORRIS: Yes.

THE COURT: Okay.

MR. MORRIS: After that I left the law firm in August of '88, so there's a narrow window there that they may try to get fact issues into. I think your Honor can address those when you address the sanctions issue. I don't think this case is going to survive, in other words, if your Honor says, go ahead and pay sanctions and pay

them within the next ten days or have your case dismissed. And I — that's what I think should be done. But let me — Mr. McConnell's asked me to be very brief, and I'm going to try to do that, because this is rebuttal. Very brief. One, Mr. Kriger and Garrett want the Court to believe that the court rule, the one-year limitation rule only applies to equitable actions. It's not what the court rule says. There has to be a mechanism for damage or legal actions as well. (C)(3), 2.612(C)(3) applies to

[PAGES 122-149]MR. MORRIS: My dad was going to help her out basically, if she couldn't find a place. But she found a place and she never exercised the option.

THE COURT: Okay. Okay, first the easiest one, at least for the Court, is the motion made by Ken Morris on behalf of Edsel Morris and Donna Piotrowski. There are some allegations and I've gone through the Complaint to see what the allegations were against these two, and I don't see anything of a serious nature against them. First we get to the question of whether or not Edsel Morris was under an obligation to reconvey or resell the condominium to the Plaintiff in this case. In the Complaint, there's no allegation that there is any kind of an agreement that he violated by not reconveying it to her or reselling it to her. There is no allegation that there was anything in writing, by which Edsel Morris would be bound. There's further no allegation that she attempted to exercise even any kind of an oral agreement. So, she would have no claim against Edsel Morris for that. As far as Donna Piotrowski is concerned, the only allegation there is that she took property in her name, when she didn't even intend it to be hers because she lives in Westland, has a business in Westland and never intended to move out to Clarkston. Well, the only evidence that I see in this case is the fact that Eddie Morris said that she should buy it as an investment, which she did. Some people buy property in Florida, California as an investment without ever having gone there or ever intending to live there. Eddie Morris's representation that it was a good investment — this property was purchased. The evidence does indicate that Eddie Morris did make the original deposit of a

thousand dollars, which isn't too important. He didn't close on this deal. The deal was closed by Donna Piotrowski, personally. The fact it was in her name alone, I can see no importance to that, whether her husband's name was on it or not. Apparently she borrowed some money from her father and put it in her name alone. It's the way some people do business. And I see nothing wrong with that, that's actionable. What is really — interests the Court is the fact that the only allegation here made is one of a possibility that perhaps I sue Donna — and Donna Piotrowski and Edsel Morris based upon the fact that I hope that subsequent discovery will show that they were conniving and that they colluded against me and that I have a cause of action against them. You know, that's the thing that lawsuits are made of. When somebody pays his money to start a lawsuit and signs a pleading, you've got to have more than, I hope that discovery will show that I have a cause of action. This was not done in this case. There's no claim that the Plaintiff ever tried to exercise any option. And the fact that somebody may have told Eddie Morris that there's an agreement — when it was even his father that said well, we have an agreement. There's no indication that Eddie Morris ever saw any written agreement and as lawyers we all know that an agreement to sell property if it's not executed, there nothing to take it out of the Statute of Frauds, is not enforceable, and there's no evidence that it was ever tried to be enforced and that the Statute which raises the defense. The fact that this property was bought through Eddie Morris's finding it and Donna Piotrowski bought it in her name, there's no evidence whatsoever that there was any indication that it was made to defraud the Plaintiff in this case. The — it may or may not be important, but the only claim here is that eventually the property was sold and there was a loss. So, apparently she wasn't deluded unless the claim is that well, there was some equity in there during the divorce. But just to hope that something will turn up to show that there was a fraud is not enough to bottom a lawsuit. And I would grant the motion for summary disposition as to Edsel Morris and Donna Piotrowski.

Appendix A-4
A-4.21
Transcript, 12/18/89 Hearing

There is a — the next issue on Eddie Morris. In reading the judgment which is dated April 29th, 1987, it provides, that it's further ordered and adjudged that except for the obligations created by this judgment and the property settlement agreement, each party releases the other from all demands or other claims, whether accrued or unaccrued, known or unknown, that have arisen or may arise from any act or omission prior to the execution of said property settlement agreement. Now, the property settlement agreement, if you look at that, it's dated —

MR. MORRIS: — 4/20/87, it's up in the upper right-hand corner.

THE COURT: — 4/20/87, just a few days before the divorce was entered. It's not signed and it wouldn't be required to be signed by the attorneys. However, she did have a capable attorney and this capable attorney did indicate that — I've got to back up, I've got to back up. The agreement indicates that she's read it, understands it, had the opportunity to consult with counsel concerning the same, and she agrees to the terms and that it was executed of her own free will and not pursuant to any coercion or duress. What she's doing now is repudiating this. Her contention is that she was not in a state of mind not to sign this; however, she's an intelligent person, this was in there and she saw it. Additionally, if her attorneys feel that well, she signed that under duress, nevertheless, they went ahead and cooperated in the granting of the judgment, whether it was by withdrawal, or whatever it was, they did sign the judgment, am I right or wrong in that?

MR. MORRIS: You're right, your Honor.

THE COURT: They did sign the judgment, that was my understanding. They signed the judgment, they knew that the property settlement was in some way, whether incorporated or made a part of, it doesn't matter. They knew it was incorporated, they knew what its terms were and if they thought there was coercion, they had an obligation not to sign it. So I have to assume that they agreed with the provisions in the divorce judgment, not having

indicated anything to the contrary and signing the judgment and letting probably Eddie Morris take the judgment by default. So this Court's inescapable conclusion is that she understood what she was signing in the property settlement, she understood the provision in the judgment or her attorneys understood it and that's attributable to her. Her attorneys subsequently signed affidavits she was nervous and didn't understand it and under duress and yet they saw this provision in there and they incorporated this mutual release in the judgment. Based upon that, this Court would find that the mutual release in the judgment is valid and that it does release Eddie Morris of any known or unknown claims, accrued or unaccrued, up through the execution of the property settlement agreement which was about — if that's dated 4/20, it was dated nine days before the judgment was entered.

We get to the question of certain claims made in the Amended Complaint. Now, that Amended Complaint it's a long one, 27 pages, dated November 16th, 1989. I guess at that time the Plaintiff was in pro per; but another inescapable conclusion is that she had a lot of help in preparing this from some attorney just as the original Complaint was either plagiarized from some former Complaint which talked about parties who are not parties to this case claiming something against them. And yet a lot of this is the same with some of that deleted. So I'm satisfied that she had some help. But anyway she signs it and when she signs a Complaint she warrants to the Court that she's made some investigation of the facts and that she has some knowledge that her Complaint was well taken.

Among the common allegations, we've got a lot of allegations in here about certain things, which I'll get to in just a minute. The specific paragraph headings other than common complaints, talk about violation of the Elliott-Larsen Civil Rights Act. Well, that is a cause of action which either accrued or could have accrued, known or unknown, surely known before the divorce judgment was entered into and yet she released all these claims. Among these claims were things that happened as a result of her employment

with the Garrett office at the time that Eddie Morris was there. The Counts for fraud are stated in very general terms. You talk about damages over 10,000 without specifically indicating to the Court what these damages are. Misrepresentation goes hand in hand with fraud and it's the type of thing that was released knowingly. The damages for intentional infliction of emotional distress, I've studied those and I've even gone back to the original common allegations. Nowhere in these common allegations is there anything that rises to the quantum that's necessary to prove intentional inflection of emotional distress. I'm going to summarily discount the monetary claims by the Plaintiff against Defendant Eddie Morris; because when you make monetary claims you're asking for money and you're not seeking anything for this intentional infliction of emotional distress which goes to one's hurt feelings and one's mental distress. I'm going to get back to that in just a minute about the mental distress. But all that which has to do with property and that, has to do with failure to pay certain things, that's money, you're talking about not mental distress. On mental distress, some of the things about he said he would adopt the baby and he didn't adopt the baby and the duress that he used against her if any, or on her in the employment situation, all that, at least up to the date of the divorce judgment, has been eradicated by the mutual release. But, intentional infliction of emotional distress, is that type which, and these are the words which are used in every decision, which the common person on the street would look at and say that's outrageous. And I have seen no allegations to make anything outrageous, a little mean, a little spiteful as these parties were during the divorce, perhaps. I'm only saying perhaps. But nothing that rises to the intentional infliction of emotional distress, like taking somebody's children away from them, alienating their affections, convincing them that their mother is a bad person. That would bother me as in the *Vhama* case, a case for intentional infliction of emotional distress and that was all the the *Vhama* case stood for. It's the only case, to my knowledge, where one spouse sued another for intentional infliction of emotional distress. The only other case that I've seen on this issue was a suit for assault and battery during the

divorce where they claimed injuries. And while the claim was — the divorce court took care of all that — the trial court held that there was no release of an assault and battery claim, and they let the case go on and it went to trial. That's completely different from this case, because in that case, there was no mutual release and that was the basis upon which the trial court agreed to let the case go on and it actually did go to trial.

There are a lot of other issues; one issue is whether or not the claims of the Plaintiff arise out of the divorce judgment substantially over a year after the judgment when this claim is made. I'm satisfied that the claim for these monetary elements of damages are made substantially one year after when the evidence indicates that whatever she knew now, she had some idea about then and didn't bring a case. The fact that there's a contention that she was so upset that she threatened suicide, I don't think there was any actual attempt at suicide in any of the pleadings that I read. A lot of people claim that they're going to kill themselves unless somebody does something.

MR. KRIGER: Your Honor, there was (inaudible words).

THE COURT: There was actual? What was done? Because I don't recall it in the pleadings.

MR. KRIGER: No, there was an overdose of sleeping pills, she was hospitalized for two weeks.

MR. MORRIS: That was in February of '87 before the mutual release, your Honor.

THE COURT: Interesting.

MR. KRIGER: Well, I —

THE COURT: But, having to do with her state of mind, that's okay. But then there was a release, and within a year, she still didn't do anything to upset that release. As far as the question of tender back, I somewhat agree with Mr. Garrett that not in all cases is it required, but this decision is not based upon a failure to tender

back. I'm satisfied that she did do many acts in reliance upon this judgment, did accept some money upon reliance on this judgment and did retain other things that she got in reliance upon the judgment. So the Court would order that this case not only for the things that I just mentioned now, but for all the things that are in all the parties' briefs up to this point, I'm going to grant the motion for summary judgment as to Eddie Morris.

MR. MORRIS: Thank you, your Honor.

THE COURT: Just a minute, I'm not quite done. I'm done. This is yours, Mr. Morris.

MR. MORRIS: Thank you, your Honor. Mr. McConnell has the next motion.

MR. MC CONNELL: If it please the Court, and I know how to be briefer than my client.

THE COURT: I hope so.

MR. MC CONNELL: The matter of sanctions are now to be addressed by me. I'm handing you a two-page summary of the relevant court rule sections and also the December 1989 summary out of Calahan's Michigan Pleading of Practice. And while I'm doing that, I'm sure that the Court will grant the teaching of the just good old-fashioned memory refreshment, I'll wait until you —

THE COURT: No, go ahead, I've read it.

MR. MC CONNELL: All right. The Court has now ruled that the Plaintiff's Complaint was not properly the subject of having been investigated before it was filed. It was filed in the face of the sound release contained in the Judgment of Divorce. It offered no basis to escape from established existing law or to seek modification of established existing law that releases in court judgments being what they say, no good faith investigation and Mr. Garrett is a party to this whole thing and has caused it to go on for six weeks, generating more than five pounds of paper and there's been nothing offered by way of the usual careful methodical homework that any

person must do before they make charges of this nature. The State Legislature in the section of RJA that's cited at the end of the memorandum, has declared it to be the public policy of Michigan, binding on this Court that frivolous commands the granting of sanctions and it is defined by the people in Lansing as meaning the party's legal position devoid of arguable legal merit. Now, if you just back up and think of what you've just ruled here, you have, I think, met that standard end this welter of paper of the relief sought was dumped on you and it's all devoid of legal merit. Yesterday as we were plowing through this, because I've been tied up in more interesting matters, I saw Eddie's time records just for October and November, 140 hours. That will be coming into you, Judge Kaufman, in a solemn affidavit that you may rely on that representation for the purposes of doing what should be done here today. When that affidavit comes in, if you find that you want to back up and modify the order that I think you ought to enter today, just haul off and ex parte, shrink it down. I have only 20 hours of time on this matter, thank God. Eddie's rate when he was still with Garrett was being billed out between $125.00 and $135.00 an hour by Garrett. It's now at $150.00 with adjustments, naturally, depending on the circumstances. This kind of annoyance should be charged certainly at that rate. Mine is grossly exorbitant, $250.00, but modify it down because you must not lose sight of the community standard, the objective community standard which you must apply. You can listen to what my rate is, but modify it so it's fair. You've heard Ken Morris and I trust, he can likewise put an affidavit in showing the represented 50 hours. When you get all through, it seems to me, Eddie's comes out at about $21,000.00 for his 140 hours, mine might be $5,000.00, but that's a pretty heavy rate, do anything you like with it, I don't care. Ken Morris, he's had a number of years additional experience, maybe $7,500.00 looking at around $33,000.00. Now, if you do nothing, this irritant will pop up again. Judge Gage had to put up with it up until June of this year and she's going to have to put up with a motion now to set aside the without prejudice part and award sanctions because there was not the disclosure that this bunch of stuff had been filed. It was concealed

from her, concealed from us. We would not have consented but for the concealment. But that's Garrett's style, it's well known in the community of legal and I think judicial also. I would urge that you exercise your God given judgment, award sanction, and if it's gotta be against both of them, both of them, fix a reasonable time for it to be paid, failing which the judgment becomes final and execution can issue. I guess that's all that we — you can do now. Again, I renew the — I'm handing a proposed order with copies to counsel, found it blank and an original to the Court and if you prefer waiting until you see the affidavits, go right ahead, it doesn't make a bit of difference. But whatever you do will be right. Finally — that cleans up the motion for sanctions. Mr. Ken Morris may have something to say about it. I'm now handing you a proposed order with copies to Counsel to release the Eddie Morris converted monies by this Plaintiff that's sitting in your clerk's office and I have narrowed the order from the way my client prepared it last evening. He was going too far, and we've shortened it down, or struck it down to where it belongs, and it may be signed, I think, without any hearing from the other side. They converted that money, the Plaintiff did, in April — in March or April when the business was sold, put it on her own bank account, used it, then filed this silly lawsuit in April, said they were tendering it to the Court and didn't bother bringing in a court order to pay it into Court and it was your order of December the 4th, that finally got it into the Court. That's just old common law thievery and interest must be afforded. The order should be signed directing it to be paid over forthwith to Eddie, with usual interest.

MR. MORRIS: Your Honor, all I have to add is I join in the motion for sanctions. It becomes obvious that unless the motion isn't granted, Mr. Garrett is going to try to bang our heads against the wall, and spend $80,000.00 on this case, too.

THE COURT: What was the last thing — I didn't hear the last thing you said.

MR. MORRIS: If the motion isn't granted, your Honor, Mr. Garrett is going to take other measures and try to allow us — make

us spend a lot more money before it's over and time. If he can't be discouraged, this will go on for an infinity.

THE COURT: Mr. Kriger?

MR. MC CONNELL: I must make one correction, in no respect indicated this newly appearing lawyer, (inaudible words) sanctions. He just showed up and he ought to have known better, but he did and he didn't do anything other than try to help this Court a little bit within the framework. But the harm was all done by Garrett, he ought to be (inaudible) for the remedy.

MR. KRIGER: Your Honor, Mr. Garrett will speak as to the sanction motion against him. I would just like to speak on behalf of Elizabeth Bechtold. Your Honor, I believe that sanctions in this case would be wholly inappropriate. I respectfully disagree with your ruling. I believe that there was substantial evidence on the issue —

THE COURT: See that's a fate accompli. Just argue.

MR. KRIGER: I understand that, but I think it's important to understand why I don't believe that this was a vexatious lawsuit. What I — let me back just back up. I was referred to Mr. Garrett by another attorney and I came and I met with Mr. Garrett and I met with Ms. Bechtold and my first blush, as I indicated earlier to you, was this was another bitter divorce battle where the parties could just not let sleeping dogs lie. But then I said, well, let me look it over and I explored it, and I explored it —

THE COURT: You told me all that.

MR. KRIGER: And then I see — but I see affidavits from people in Garrett's Law Firm, that work at Garrett's Law Firm, and they said Mr. Morris, Eddie Morris, threatened to fire Ms. Bechtold if she didn't sign the releases. Once that fact was established in my mind, I believed that there was something to this lawsuit. Let me — and maybe I should state and maybe I don't have common sense, but I took the case on a contingency agreement because I believed that if I could get it to a jury, that I could get something

from a jury. That if the jury believed that he put this woman through this kind of trauma, the suicide and everything else — attempt — and everything else that occurred, that they would award her some kind of damages. I believed there was merit to such an extent and obviously this Court disagrees as to the merit of the lawsuit, that I took it on a contingency fee. I don't believe that the Court can say that this case was completely without merit. Not when we have affidavits from people in the office that some threats made by Eddie Morris on the termination of employment. Not when we have an attorney signing an affidavit that indicates she was under complete emotional distress, wouldn't even allow us to make motions to compel interrogatories. Based — and I'm not going to talk too much longer, your Honor, based on those things, and the fact that Ms. Bechtold has been through the ringer, I believe it would be appropriate to impose any sanctions on Miss Bechtold. If the Court has any questions, I'd be more than happy to try to answer them. I mean, she's been through enough, I don't think it would serve any purpose to impose sanctions upon her.

MR. GARRETT: First, your Honor, with regard to the request for sanctions, I believe I am correct, but I'm not sufficiently familiar with all the papers that the Court has been deluged with to be certain that I'm correct in saying that the request for sanctions is premised, according to the pleadings, on MCR 2.114(D) and (E). It is not premised, to my recollection, upon the State Statute and to the extent that this attempt by them to amend the motion to make me respond to allegations that I could not reasonably be expected to have responded to, I object. Next, let's look at the court rules, because the court rule and the statute are different. The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of a legal sense, it's not based upon existing law or a reasonable argument for the extension modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.

THE COURT: Let me just correct you on the one thing. You said that the Statute is discretionary. I'm sorry, you said the rule is discretionary. It's not.

MR. GARRETT: I'm sorry, I stand corrected.

THE COURT: The Rule says this, if a pleading is signed in violation of this Rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.

MR. GARRETT: I'm sorry, I'm sorry —

THE COURT: No, it's mandatory — I knew it was mandatory, that's what I looked at it.

MR. GARRETT: You're right, and the distinction I should have made is that the standard for imposition are different between the Statute and the court rule and the amounts to be imposed are different under the Statute and the court rule. The Statute talks about how you compute the amount, the court rules doesn't. The court rule says that you know, you can throw somebody in jail if they — if you find that they violated 2.114 (D) and (E). That is not one of the alternatives specified by the Statute, and the court rule does not specify the types of damages that the Statute does. So, first to the extent that they're attempting to modify their argument to — with reference to the Statute, I object. Second, I believe that the plethora of affidavits filed in this case establishes that there were substantial facts upon which to ground this lawsuit. Your Honor obviously has found that the lawsuit ought to be dismissed, but only after lengthy argument with regard to primarily the facts. In the course of your Honor's pronouncements, just recently, the only thing specifically that you referred to in terms of the lack of serious allegations were — according to my notes, was that you didn't there were any serious allegations about Edsel and Donna Piotrowski. Next, in determining whether or not to impose sanctions, I think you have to determine whether or not there was some basis in law or for the reasonable extension or reversal or modification in existing law on which to premise the Complaint. Your Honor, earlier today, inquired as to wasn't it the Plaintiff that cited *Vhama*. In fact, your Honor, it was your Honor that first cited *Vhama*.

THE COURT: I first cited it, but then —

THE COURT: I first cited it, but then —

MR. GARRETT: I understand.

THE COURT: — in the brief somebody else cited it.

MR. GARRETT: We brought it up —

THE COURT: Sure.

MR. GARRETT: — so what I am suggesting to you is, that based upon the facts that were established by the affidavits of Bechtold, Evans, Garrett, McCarthy (ph), Trepke (ph), Stuart Trepke (ph), the Pontiac Policeman, Eric McCann, Mark Haffley (ph), I think that it's difficult for the Court to conclude that there is not substantial factual basis for the Complaint. In addition, I think you also have to take into consideration the fact that due to the Defendant's refusal to make discovery and their obstruction of discovery, other facts not which we were on a fishing expedition to get but other facts which we could reasonably have obtained from them, but were not available by affidavit; were available to buttress the Complaint. So I believe that based upon the briefs that we filed in support of the case, even if we didn't support this case, even though your Honor is well aware of the fact that you could have granted the motion for summary disposition, I think that there is ample legal authority for us to contend that there was, if not existing law, a reasonable basis for the extension, modification or reversal of existing law to allow the Complaint to exist. Next, before it slips through the cracks, let me address the, "order directing clerk to release funds forthwith and granting other releases". I have not had the chance to read the language of the other orders, but I note that it's it's rather presumptuous for the other side to presume that the Court will make certain findings that the Court hasn't expressly made. And as I now glance at the order, post order regarding sanctions, I — I see the same thing. Here the other side is presuming to know what the Court's going to conclude. I'll let you draw whatever conclusions you want with regard to the order regarding sanctions which you undoubtedly will. But please note that if you subscribe and enter the order directing the clerk to release funds forthwith

and granting certain other relief, that amongst other things, you are not only finding an act of conversion occurred, which you haven't found, and which there's been no argument about, but in addition, you're ordering that the Plaintiff pay a statutory rate of interest, whatever that means. I presume they're talking about MCLA 600.6013, the judgment rate of interest, that she pay a statutory rate of interest from a date that precedes the filing of the Complaint. And in addition, by signing that order, you are, in effect, granting the Defendant Eddie Morris a summary judgment with regard to matters that are clearly and unequivocally attested by affidavit. Are you finding, as a matter of law, and are you not finding as a matter of law if you enter that judgment, that Eddie Morris didn't breach any of the oral or written obligations that he had with regard to the Northern Michigan property? Because I suggest to you that there is no adequate basis in this record for making such a finding and that by distributing the monies to her, you are, in essence, saying that she could never have her day in Court as to whether the business or the property or their value were diminished by so much as his breaches of written contracts, including obligations in the property settlement agreement which were not merged in the judgment. So, I suggest to you that if you are, as you are obviously are, bound and determined to dismiss this case once and for all, that money that's paid to the Clerk of the Court should not go to Eddie Morris; it ought to go back to her. They are still — she is still entitled to her day in court on the question of whether or not his acts and omissions in breaching agreements concerning the Northern Michigan property caused her damages. Failure to cooperate in obtaining financing, for example. And I guess what I'm saying is, that the — under the circumstances, I think that order is far too broad. In addition, the order purports to require an accounting.

MR. MC CONNELL: I'll abandon that provision in the last paragraph of the order. I didn't want it in there and it has nothing to do with — strike that.

THE COURT: Yes, I've already stricken it.

MR. MC CONNELL: Good. We think alike.

THE COURT: (inaudible words).

MR. GARRETT: Unless Judge McConnell's statements, your Honor, be treated as the truth, let me indicate to you that contrary to Mr. McConnell's statements at the outset of today, Judge Gage not only did not impose sanctions, she expressly told Eddie Morris and Ken McConnell and me in her chambers on May 2, 1988, that she was not going to impose sanctions with regard to their allegations that they were frivolous pleadings and there is — although there was not a formal court record of that proceeding, at an appropriate time in that case, I made a written verified allegation to that effect which was not denied by them. So, in terms of whether or not sanctions should be imposed, based upon the record of that case of which I ask you to take judicial notice, I think you ought to follow Judge Gage's lead and decline to impose sanctions. Until I know whether or not the Court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

THE COURT: First, as to the proffered order directing the clerk to release funds forthwith and granting other relief, what the Court is going to do is order that the $5,439.07 which was filed, will be forthwith released to the Defendant, Eddie Morris and clerk will be directed to pay these funds. On the next paragraph, the Court has deleted certain portions of it. I'm not going to make any specific findings about conversion or anything like that, just that he was due these funds. And I'm just going to order that the Plaintiff pay to Eddie Morris interest at the Statutory rate or these funds from the date she received said funds to the date of this order. Probably nothing will happen on that aspect of the order, but I'm not going to make any finding, and I'm deleting the last paragraph of that. As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have

known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful, and really shouldn't be the basis of bothering the Court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our Courts have defined it. I am going to order that sanctions be ordered. And the sanctions that I'm going to order are the following: To — I realize it's substantially less than the claim but I've got to take into account who's paying these sanctions and what their financial status may be. I'm going to order the following: $2,500.00 to Kenneth McConnell, $7,500.00 to Eddie Morris, and $1,500.00 to Ken Morris.

MR. MORRIS: That's fine, thank you.

(Hearing concluded).

Appendix A-4
A-4.35
Transcript, 12/18/89 Hearing

REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 148, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Monday, December 18, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This 11th day of January, 1990.

Appendix A-5
A-5.1
Order, 12/18/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.- Case No. 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants. HON. CHARLES KAUFMAN

Elizabeth A. Bechtold
Plaintiff, In Pro Per

Kenneth B. McConnell (P17326)
Of Counsel To Eddie M. Morris

E. Michael Morris (P31547)
Defendant, In Pro Per
2000 N. Woodward Ave., Ste. 100
Bloomfield Hills, MI 48013
(313) 645-1106

Kenneth J. Morris (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER DIRECTING CLERK TO RELEASE FUNDS FORTHWITH AND GRANTING OTHER RELIEF

At a session of said Court,
held in Detroit, Michigan,
on /s/ December 18, 1989

Appendix A-5
A-5.2
Order, 12/18/89

PRESENT: HON. CHARLES KAUFMAN
Circuit Judge

This court having issued its Order Re Deposit of Funds on December 4, 1989; upon a hearing before this court, with the court fully advised in the premises;

IT IS HEREBY ORDERED that the monies previously deposited with the clerk of this court ($5,439.07) be, and hereby are released forthwith to the Defendant Eddie M. Morris. The clerk is directed to pay these funds to Mr. Morris.

IT IS FURTHER ORDERED that, Plaintiff shall pay to Defendant Eddie M. Morris interest at the statutory rate on these funds from the date she received said funds to the date of this order. Said payment shall be made within 5 business days from the date of this order.

/s/ Charles Kaufman
HON. CHARLES KAUFMAN
Circuit Judge

c: MORRIS.7

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge Deputy Clerk

Appendix B-0

B-0.1

Affidavits and Papers Filed In The Trial Court

AFFIDAVIT OF ERIC J. McCANN

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Eric J. McCann, being first duly sworn, deposes and says:

1. If sworn as a witness , I can testify competently and based upon my personal knowledge to the truth of the matters stated herein.

2. I am and since 1968 have been an attorney duly licensed to practice law in the State of Michigan. My former law firm, Beier, Howlett, Hayward, McCann, Jones, Kingsepp & Shea, represented Ms. Bechtold for a one month period beginning on or about March 17, 1989 in a divorce action filed against her by Eddie Morris. The work was done by myself and Mark Hafeli.

3. During our representation of Ms. Bechtold, it was abundantly clear that she was suffering from severe emotional distress caused by her relationship with her then husband, Eddie Morris.

4. Throughout the representation, Eddie Morris' contention was that he had no interest in the Garratt law firms and that whatever interest he might claim in the Garratt law firms was worth nothing.

5. During the course of that representation, Ms. Bechtold insisted that my firm not compel answers to interrogatories or seek any other discovery from Eddie Morris or the Garratt law firms. She expressed fear that her employment would be terminated, leaving her with no means of support if such were pursued.

6. Although we believed the settlement proposed by Eddie Morris was not fair or reasonable to Ms. Bechtold and we recommended to her that she not accept that or any similar settlement, she insisted on accepting the settlement because she could not mentally or physically put up with the ordeal (not an ordinary divorce) to which Eddie Morris was subjecting her. (*See* April 22, 1987 letter

attached hereto as Exhibit "A").

7. Furthering his attempts to pressure a settlement in this case, Eddie Morris sent a letter to my firm pressuring us to review the documents and approve them. The letter was clearly a financial threat aimed at pressuring us into approving documents we felt were opposed to our client's best interest. See Exhibit "B".

8. In my opinion, due to Ms. Bechtold's emotional trauma induced by Eddie Morris, Ms. Bechtold was incapable of conducting an attorney-client relationship, incapable of accepting her attorneys' advice, and incapable of any knowing understanding of her rights.

9. Ms. Bechtold was so mentally brow beaten by her husband/employer Eddie Morris that she could not act competently in our representation of her.

10. To my knowledge, my firm did not review the proposed settlement (agreement and judgment) with Ms. Bechtold on a paragraph by paragraph basis and had no discussion with her about the paragraph entitled "Mutual Releases" on page 4 of the Judgment.

11. In my opinion, Ms. Bechtold's execution of the "Property Settlement" and submission to the Judgement Of Divorce was the direct product of her weakened mental condition.

_____
Eric J. McCann

Subscribed and sworn to before me
this 14th day of December, 1989.

_____
Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 3-6-91

1016b

Appendix B-0
B-0.3
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DORAL V. PAULEY and
JANE M. PAULEY,
Plaintiffs/Counter-
Defendants, No. 88 361909 CZ

-vs- Hon. Gene Schnelz

GARRATT & EVANS, P.C.
and C. WILLIAM GARRATT,
Defendants/Counter-
Plaintiffs.

ERIC J. MCCANN (P17276)
Attorney for Plaintiffs
33 Bloomfield Hills Parkway
Suite 155
Bloomfield Hills, MI 48103
(313) 647-9505

DAVID W. POTTS (P19043)
Attorney for Defendant/Counter-
Plaintiff P.C. Only
300 E. Maple Road, Third Floor
Birmingham, MI 48011
(313) 644-4840

C. WILLIAM GARRATT (P13858)
Defendant/Counter-Plaintiff
In Pro Per
300 E. Long Lake Road
Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

Appendix B-0
B-0.4
Affidavits and Papers Filed In The Trial Court

PLAINTIFFS' ANSWER TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL

NOW COME the Plaintiffs, by and through their undersigned counsel and hereby oppose the motion to Disqualify Plaintiffs' Counsel for the following reasons:

1. Plaintiffs have selected Eric J. McCann as their attorney, and are entitled to be represented by him.

2. Defendants' motion is frivolous and without merit.

3. Defendants' motion is untimely for if Defendants truly believed there was a conflict, they should have raised it at an earlier time.

4. Eric J. McCann never represented C. William Garratt, and never represented Elizabeth Bechtold. Although Elizabeth Bechtold did consult with Eric J. McCann, he declined to represent her and referred her to Mark Hafeli, a lawyer in Eric J. McCann's former firm of Beier, Howlett. That representation, however, ended some time ago.

5. At no time during any consultation with Defendant Garratt or Elizabeth Bechtold were any confidential and privileged matters revealed to him that are the subject of this litigation.

WHEREFORE, Plaintiffs pray that Defendants' motion be denied.

ERIC J. McCANN, P.C.

By: _____
Eric J. McCann (P17276)
Attorney for Plaintiffs
33 Bloomfield Hills Parkway
Suite 155
Bloomfield Hills, MI 48013
Phone: (313) 647-9505

DATED: April _____, 1989

Appendix B-0

B-0.5

Affidavits and Papers Filed In The Trial Court

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage prepaid thereon on April _____, 1989.

_____

Sharon R. Badder

A And it says, "Please provide a check for $2,025.37."

Q (By Mr. Kenneth Morris) And that was provided, wasn't it?

A I assume it was, although I haven't seen it.

Q It was asked that it be delivered to the Garratt Law Firm, and both you and your sister work there?

A That is correct.

Q And you were aware that she was having this hand-delivered to Eddie Morris?

A I knew she was going to ask him for the money. I don't know that I was aware that she had that hand-delivered to Eddie when she had it hand-delivered.

Q And you agreed with her asking for the money; right?

A I—

MR. GARRATT: The question is whether you agreed with your sister to ask him for the money?

A The balance on the note had to be paid off.

I didn't tell her not to ask for the money.

Q (By Mr. Kenneth Morris) The Property Settlement provided that the husband would share in the expenses to the extent of his twenty-five percent

read back the following question:

Q Isn't it true that this two thousand dollars, the twenty-five percent, that you said you were aware that your sister was collecting, was because it was provided for in the Property Settlement?

A I am lost. Can you restate it?

MR. GARRATT: I object to the form of the question.

You can take an answer.

A Among other things, he was supposed to pay for twenty-five

percent of the expenses, that is correct.

Q (By Mr. Kenneth Morris) Now you had the Divorce Judgment in you possession before it was entered by the court; didn't you?

A I don't believe so.

Q Let me show you Exhibit Twenty-Six. Is that your signature on that letter?

A It appears to be, yes.

Q Is there any question in your mind about it?

A The question in my mind is I have never seen the letter before.

Q But you signed it?

Appendix B-0
B-0.8
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	Honorable Charles Kaufman
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF PLAINTIFF

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Elizabeth A. Bechtold, being first duly sworn, says:

Appendix B-0
B-0.9
Affidavits and Papers Filed In The Trial Court

1. I am the Plaintiff in the above-entitled action and, if sworn as a witness, can testify competently and based upon my personal knowledge to the truth of the following facts.

2. Each and every allegation in my First Amended Complaint in the above-entitled action is true to the best of knowledge, information and belief with one arguable exception. That sole exception is that the events described on page 17 of the First Amended Complaint in paragraph 15(c)(iv) occurred on February 18, 1988 rather than February 17, 1988 as the pleading may be read to imply. The difference is inconsequential.

3. Because of the time constraints mentioned below, it is impossible for me to recount in an Affidavit to be filed by the date hereof each and every false statement of fact, false innuendo, false representation and false implication in the Defendants' papers that have been filed and served upon me on and since December 11, 1989 and each and every fact that disproves Defendants' false allegations. Therefore, to indicate to this Court the statements which I know to be false or misleading, I have attached a copy of Defendant Eddie Morris' latest supplement and highlighted those statements that are false and/or misleading.

4. Since receipt of Defendants' pleadings on December 11, 1987 and thereafter, numerous other matters have made it impossible for me to spend the time necessary to respond completely and adequately to said pleadings. Among other things:

(a) I had to and did submit on December 12, 1989 a term paper worth 35% of my grade at an Oakland University course where I am in my junior year;

(b) I was required to prepare for and attend two depositions, assist in the preparation for an arbitration concerning a major case, and perform administrative duties due to the office manager's unexpected absence from the law firm for the entire day of December 13, 1989;

(c) I am presently enrolled in two college courses which meet

from 6:30 p.m. to 9:50 p.m. every Tuesday and Thursday night and have been forced to spend considerable time completing homework assignments for those classes.

Given the aforesaid time constraints, I could not obtain more Affidavits than those being filed simultaneously herewith.

5. With respect to copies of documents that I produced at my deposition *duces tecum* that are attached to Defendant's pleadings, the following statements are true:

(a) With respect to Exhibit "B", a single page note dated April 28, 1987 (a date that is after my last contact with my lawyer in the divorce case), I have never had a copy of it and, to the best of my knowledge, information and belief, never saw the original or a copy until my deposition in this action; at my deposition, Defendant produced only a copy, not the original; although I cannot be certain until I see the original, I do not believe that I signed the document;

(b) With respect to Exhibit "B1", my handwritten note that bears the date of April 17, 1987, I made it contemporaneously with a conversation with Eddie Morris; Defendant's recently fabricated claim in his Supplement that "Garratt" made to me any of the statements (*e.g.*, demanding a release) contained in the first nine lines of that exhibit are false; a review of the original exhibit will show that the first nine lines are in black ink and the last two lines are in red ink (and were written at a later time). The notes in black ink including the references to Garratt's offer were statements that Eddie Morris attributed to Garratt, not statements that Garratt ever made to me. The only statement on Exhibit "B1" that Garratt made to me was the statement in the last two lines of Exhibit "B1" which is written later in red, not black, ink.

(c) With respect to Exhibit "B2", that note/letter to my attorney Mark Hafeli dated April 16, 1987 was dictated to me by Eddie Morris. I clearly recall Eddie Morris standing over me and insisting that I write word for word that letter to my

attorney stating exactly what Eddie Morris was saying. When I hand wrote that letter at Defendant Eddie Morris' insistence, I did not have in my possession the settlement documents the letter claims were attached.

(d) With respect to Exhibit "B3", those notes were made by me on the date the "Property Settlement" was signed and relate to several conversations that day, not just one conversation. Garratt did state in my presence that the release language in the divorce judgment did not release the law firm; that fact is consistent with the fact that he never demanded that I sign any release. Eddie Morris' statement to me that he would testify was not a statement made in the presence of Garratt or Evans. Also, outside the presence of Garratt and Evans, Eddie Morris — not Garratt or Evans — told me that he, Eddie Morris, would be fired if he, Eddie Morris, did not include a release for himself in the divorce judgment. I now realize that those statements by Eddie Morris were false. The final note on that page (*i.e.* that Eddie Morris told me that, if I did not sign the papers with release language supposedly drafted by Garratt, Eddie would run up my legal bills as far as Eddie could and make sure I got essentially nothing) is a true statement of what Eddie Morris said to me, again outside the presence of Garratt and Evans, neither of whom told me that. I have since learned, as can be seen by the Affidavit of Mr. Garratt filed simultaneously herewith, that Garratt had nothing whatsoever to do with the drafting of release language in the "Default Judgment".

(e) With respect to Exhibit "B4", I did receive such a letter From Mr. Garratt. However, as is clear from that letter, my lawyer had advised me to sign nothing else. Consequently, if I signed Exhibit "B", as Defendant claims I did, I signed it without the advice or consent of my lawyer.

(f) With respect to Exhibit "C", I had no prior or concurrent knowledge of my sister writing that letter or any portion of it; I never contended that she or her husband were entitled to any

benefits under the judgment of divorce; I do not now and never have controlled what my sister does and she is not my agent .

(g) With respect to Exhibits "F" and "G", I never saw a copy of the same until the time of Eddie Morris' deposition in this action.

(h) With respect to Exhibits "H", "I", "J", and "K", I had no prior or concurrent knowledge of my sister writing those letters; I never contended that she or her husband were entitled to any benefits under the judgment of divorce; I do not now and never have controlled what my sister does and she is not my agent .

(i) With respect to Exhibit "L", Defendants' purported accounting for the division of "marital assets", it is false and misleading. Following are some of the most significant falsehoods. First, it does not reflect that Eddie Morris had a $10,000 equity in Lot 218 of Deerwood II which he "equitably" owned and titled in Defendant Donna Piotrowski's name. Second, it does not reflect the fact that I entered the marriage with assets worth at least $20,000 (my equity in the condominium that Eddie Morris had me sell to his father, Defendant Edsel Morris, for a bargain price) while Eddie Morris entered the marriage with zero assets. Third, Defendants' accounting purports to deduct $11,000 from the $62,000 that Defendants admit Eddie Morris received; while it is true that Eddie Morris received $19,000 of a possible $30,000 from the sale of the house, it does not follow that $11,000 should be deducted from his actual receipts (which include not the $30,000 potential receivable but, rather, the $19,000 actually received). Fourth, Defendants have purposely failed to list assets specified in the "Property Settlement" agreement as going to Eddie Morris merely because the "Property Settlement" agreement that he prepared does not state a value for such assets; for example, under paragraph 7 of the "Property Settlement" Eddie Morris was to receive

Centerior Electric stock but, because no value was stated in the "Property Settlement" that Eddie Morris prepared, no value is attributed to that in Defendants' accounting (Exhibit "L"). Fifth, Defendant attributes to me a $14,000 figure which he now claims is an attorney fee relating the recovery on a personal injury claim of my son in 1984 or 1985. Defendant conveniently fails to mention that the law firm, who represented my son in that matter, never expected or claimed entitlement to any attorney fee. If anyone had been entitled to an attorney fee for that representation, it would have been the law firm, not me or Defendant Eddie Morris. Sixth, Defendants' accounting attributes to me the receipt of $10,000 worth of furniture with Defendant receiving nothing; in fact, I had much furniture prior to the marriage and, while I did receive more than half of the limited furniture acquired during the marriage, that furniture did not cost $10,000; Defendant agreed that the marital furniture was equitably split when I forgave his $1,000 debt due me in mid 1988 (See attached exhibit); one can be sure that if Defendant's equitable share of the marital furniture was worth substantially more than $1,000, Eddie Morris would never have agreed to forego receipt of his one-half share to cancel such a relatively small, $1,000 debt.

(i) As For Exhibits "M" and "N", the dates of those documents and the use of those documents are considerably different than Defendant's recent fabrications claim. Exhibit "N" was a handwritten note from Mr. Garratt delivered to me on January 26, 1987, prior to the commencement of any divorce action. Exhibit "M", on the other hand, is in Eddie Morris' writing; I never saw it or anything like it at any time prior to Eddie Morris' deposition in this case; it appears to be Eddie Morris' draft in April, 1987 of a letter that he proposed that Garratt deliver to me to induce me to accept Eddie Morris' divorce settlement offer; in that regard, Exhibit "M" expressly refers to "your divorce settlement with Ed Morris."

Obviously, given the timing of events, Exhibit "M" (which refers to an accomplished or imminent divorce settlement) could not have been prepared until April of 1987, three months after the date of and my receipt of Exhibit "N". Therefore, the following sworn statement in Defendant's pleadings is another example of his recent fabrications:

> Garratt evidently followed Defendant's suggestion, and gave Plaintiff such a letter."

Obviously, Garratt cannot "follow" on January 26, 1987 (no divorce case pending) a "suggestion', of Morris that Morris could not have made until three months later (divorce case settlement imminent).

Elizabeth A. Bechtold

Subscribed and sworn to before me
this 14th day of December, 1989.

Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 03/06/91

Appendix B-0
B-0.15
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff, Honorable Charles Kaufman

-VS.-

EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI
Defendants. Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF C. WILLIAM GARRATT

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

C. William Garratt, being first duly sworn, deposes and says:

Appendix B-0

B-0.16

Affidavits and Papers Filed In The Trial Court

1. I am and continuously since 1967 have been an attorney duly licensed to practice in the State of Michigan and a member of the following law firms: Jaffe, Snider, Raitt, Garratt & Heuer, P.C., C. William Garratt, P.C. also known as C. William Garratt & Associates, P.C., Garratt & Morris, P.C., Garratt, Morris & Evans, P.C., and Garrett & Evans, P.C.

2. I have read Plaintiff's First Amended Complaint,Plaintiff's prior and contemporaneous affidavits in this action, and the other affidavits of Kathleen Trepte, Peggy Strutz, Eric McCann, Mark Hafeli, Mark D. Evans, and Plaintiff being filed contemporaneously herewith; to the best of my knowledge, information and belief, all of the statements in those affidavits are true.

3. To whatever extent that Defendant Eddie Morris' affidavits and pleadings state facts that are expressly contradictory to those affidavits, his statements are, to the best of my knowledge, information and belief, false.

4. Because of my professional commitments between my receipt of Defendants' pleadings on Monday, December 11, 1989 and the due date of this Affidavit, December 14, 1989, it is physically impossible for me to detail each and every false statement in Defendant's pleadings and each and every fact to disprove same. However, for the sake of illustration but not by way of limitation, the following should serve as concrete examples:

(a) I never demanded that Eddie Morris include in his divorce settlement with his wife, whether in a property settlement agreement or divorce judgment, any "release" for his benefit; as pointed out in Plaintiffs' contemporaneous Affidavit, filed herewith, Eddie Morris apparently made false statements to Plaintiff to that effect that I had made such requests. I believe that Eddie Morris constantly attributed to me in conversations with Plaintiff during the first four months of 1987 a series of veiled or obvious threats about what I supposedly would or would not do when, in fact, I made no such threats. At all times during the course of the Morris' divorce action, it was

my desire that either the Morrises remain productive employees of the law firm; to that end, I caused the law firm to pay a $10,000 bonus in an attempt to facilitate a settlement; at the time, I thought it was possible, and I wanted, to retain their friendship but their employment with the law firm;

(b) one of the many examples of Eddie Morris' recent fabrications in his papers filed with this Court appears at page 38 of his "Supplement" which states:

> Garratt evidently followed Defendant's suggestion [Defendant's Exhibit "M"] and gave Plaintiff such a letter [Defendant's Exhibit "N"].

Exhibit "N" is my note to Plaintiff on January 26, 1987 — before any divorce action was pending between the Morrises — to give Plaintiff some reasonable assurance of employment security; at Eddie Morris' request, the law firm either had hired or was about to hire a new bookkeeper to replace Plaintiff in that function. Exhibit "M", on the other hand, is something that was entirely an Eddie Morris concoction; in April of 1987 he drafted it without my prior knowledge and requested that I write and sign such a letter to Plaintiff, to induce her to accept whatever divorce settlement offer he was making to her at the time it was written (three months after Exhibit "N"). To the best of my knowledge, information and belief, Plaintiff never saw Exhibit "M" and I never saw Exhibit "M" again until Eddie Morris' deposition in this action when produced the original thereof;

(c) substantially prior to February 17, 1988, Eddie Morris told me that he had not disclosed to Plaintiff the fact that he equitably owned in his sister's name — and had a $10,000 equity in — a "Deerwood" subdivision lot which he had purchased as a prospective homesite for himself and Wendy Meyer, with whom he began a romantic relationship in 1986 that lasted until after April of 1987 and whom he intended to marry after he and she had each obtained a divorce; attached is copy of a $12,650 check dated February 12, 1987 that I

believe Eddie Morris used indirectly to close the purchase of the lot on February 13, 1987; I knew nothing of the events that transpired between Plaintiff and Eddie Morris on February 17, 1988 until after Plaintiff had negotiated and deposited the $1,500 check; shortly thereafter, as indicated in Exhibit "D" to Defendant's documents (Plaintiff's handwritten notes), Plaintiff and Eddie Morris came to me to discuss her dissatisfaction with the following:

(i) she said, and he acknowledged, that initially (before she endorsed and deposited the check) Eddie Morris claimed to have told her everything he knew about the Deerwood lot;

(ii) she said, and he acknowledged, that, after depositing the check, she asked him a few more questions, but he refused to discuss the subject;

(iii) then she had learned for the first time from her sister that he, Eddie Morris, and his girlfriend Wendy Myer had been seen walking a lot in Deerwood; and

(iv) she suspected that Eddie Morris had lied to her about the Deerwood lot, that he had some financial interest in a Deerwood lot, and that he had tricked her into endorsing his check

After they had left my office, I spoke to Eddie Morris privately, and demanded to know what exactly he had told Plaintiff about the Deerwood lot and what exactly was written on the back of the check (because it was obvious from her statements to me in his presence that she had thought the $1,500 check merely released Eddie Morris' obligation to pay her the same amount a few months later, nothing else). After concluding my conversation with Eddie Morris, I went to speak with Plaintiff and ascertained what, according to her, Eddie Morris had told her about the lot and the check. As a result, it was obvious to me that:

(a) Eddie Morris had lied to Plaintiff when he gave her the check, both as to the meaning of the "release" language and as to the facts concerning the Deerwood lot; and

(b) Eddie morris had not told Plaintiff what he had told me the truth to be, namely, that he had a $10,000 or greater equity in the Deerwood lot.

I then told Eddie Morris privately in no uncertain terms that he "defrauded" her or words to that effect. Eddie Morris did not deny that he had defrauded Plaintiff but tried to excuse his conduct by claiming that she supposedly had received most of the marital assets. When Plaintiff privately asked me what to do, I told her that, if I were in her shoes, I would write a check to Eddie Morris in the same amount ($1,500) as his check (the day before) to her and give it to him together with a note stating what she believed. It is my understanding that she did so by delivering to him on February 18, 1988 an original check for $1,500 and a note, a copy of which is attached hereto as Exhibit "A"; and

(d) contrary to Defendant Eddie Morris' misrepresentations to this Court, I did not draft the any release language in the *Morris* v *Morris* divorce judgment; if the release language in the divorce judgment is identical to the release language in the prior *Garratt* v *Garratt* divorce judgment entered in 1985, William Hampton (the then lawyer for my ex-wife) drafted the language; Mr. Hampton had it included in my 1985 divorce judgment over my objection. (Perhaps in 1987, Eddie Morris lifted it out of my prior divorce judgment and put it in his proposed judgment in *Morris* v *Morris*.)

6. As a result of the time constraints set forth below, I was unable to obtain more affidavits, spend more time on Plaintiff's papers, or perform more legal research — by the date hereof — as a result of which Plaintiff has been prejudiced:

(a) by virtue of a court order in another case pronounced on November 29, 1989, December 14, 1989 was and is set aside

for depositions; the date was set by the Court even though I requested an earlier date;

(b) in order to make that deposition as meaningful as possible, I scheduled another deposition in the case to occur the preceding afternoon, namely, Wednesday afternoon December 13; although that deposition was aborted by the deponent Eddie Morris, I did not know that he intended to do so until I had spent the forenoon preparing and the deposition had already commenced; I spent most of the remainder of the afternoon preparing a motion for sanctions and other relief as a consequence of his misconduct; and

(c) a portion of Tuesday, December 12 was expended taking the partial deposition in this action of Defendant Eddie Morris' former fiance Wendy Meyer concerning the subject matter of the releases as to the Deerwood lot and other items; the balance of Tuesday was spent on other professional commitments that could not be avoided or postponed — as was the afternoon of Monday when Defendants' motions, affidavits and other papers arrived periodically, but late.

_____

C. William Garratt

Subscribed and sworn to before me
this 14th day of December, 1989.

_____

Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 03/06/91

1025b

Appendix B-0
B-0.21
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	Honorable Charles Kaufman
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

PLAINTIFF'S RESPONSE TO DEFENDANT EDDIE M. MORRIS' MOTION TO COMPEL DISCOVERY AND FOR ENTRY OF ORDER

and

PLAINTIFF'S REQUEST FOR SANCTIONS AGAINST DEFENDANT EDDIE M. MORRIS

Appendix B-0
B-0.22
Affidavits and Papers Filed In The Trial Court

Plaintiff by and through her attorneys Garratt & Evans, P.C. states as and for her Response To Defendant Eddie M. Morris' Motion To Compel Discovery, etc. as follows:

INTRODUCTION

This Response is an effort by Plaintiff to cite numerous facts, with detailed substantiation, not argument, in an attempt to try to set the record straight to show that Defendants are lying to and attempting to deceive this Court. While the captions of the following sections may appear

Clarkston when both she (Doral Income Tax Services) and her husband (a glass company) own established businesses near their home in Westland and their children are enrolled in private schools in Westland. Why wasn't Defendant Donna Piotrowski's husband a purchaser of that lot? Even more incredibly, why did Defendant Eddie M. Morris secure a $12,500 check to himself from the Garrett law firm just one day prior to the February 13, 1987 closing on the purchase of the lot? Plaintiff contends that that $12,500 check, a marital asset owed by the law firm to Defendant during 1986 [before the divorce], was secured on February 12, 1987 so that $10,000 of that money could be used as the down payment on that lot. Plaintiff expects to prove during the course of discovery in this action that, in fact, Defendant Eddie M. Morris purchased the aforesaid lot with marital assets as the future site of the marital residence of Defendant and his female friend as soon as his and her divorces were final. Defendant admits in his testimony that he took over payments on the lot shortly after the divorce action was concluded but did not, until nearly a year later, "reimburse" his sister for the $10,000 down payment she had allegedly made. Clearly, Defendant Eddie M. Morris must have made that $10,000 down payment himself on or about February 12, 1987 or he would have promptly reimbursed his sister for same when he took over payments on the lot shortly after the conclusion of the divorce action.

9. It is essential to Plaintiff's preparation of her response to Defendant's Motion To Dismiss which is presently scheduled for December 18,1989 that Plaintiff receive responses to the aforesaid questions as well as numerous other questions. In addition, it is essential that Plaintiff be allowed to take the depositions of Defendant for the reasons set forth above. However, Defendant Eddie Morris was permitted to submit questions and did submit questions to counsel Kenneth Morris for purposes of that deposition.

WHEREFORE, Plaintiff prays that this Honorable Court make and enter an order:

(a) denying Defendant's Motion To Compel Discovery;

(b) prohibiting Defendant Eddie Morris from conducting Plaintiff's deposition;

(c) ordering that the depositions of all Defendants be completed prior to Plaintiff submitting to further deposition;

(d) sanctioning Defendant Eddie M. Morris for the misrepresentations he made to the Court on December 1, 1989; and

(f) entering an order that sets forth all of the Court's rulings at the December 1, 1989 motion hearing.

GARRATT & EVANS, P.C.

By: _____
C. William Garratt (P13858)
Attorneys for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

Dated: December 7, 1989

1000b

Appendix B-0
B-0.25
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	89-909989 CZ 4/20/89 JDG: CHARLES KAUFMAN
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	BECHTOLD ELIZABETH A VS MORRIS EDDIE M

C. WILLIAM GARRATT (P13858)
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(313) 645-1710

E. MICHAEL MORRIS (P31547)
In Pro Per
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(313) 645-1106

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

AFFIDAVIT OF EDSEL MORRIS

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I Edsel Morris, being first duly sworn, deposes and states:

1. I am the father of Eddie Morris, and am also a Defendant in this matter.

2. I categorically deny ever concealing any marital assets from Elizabeth Bechtold. Among other things, during his marriage to Ms. Bechtold, I never held any money for Eddie Morris; I never concealed, or attempted to conceal, any stock which belonged to Eddie Morris from Elizabeth Bechtold; and I never, in any manner whatsoever, concealed, or attempted to conceal, the existence of a residential lot from Elizabeth Bechtold.

3. In fact, I was unaware, until, I believe sometime in 1988, long after the divorce between Ms. Bechtold and my son was final, that a residential lot had been purchased by my daughter, Donna Piotrowski, in Clarkston, Michigan. I do remember loaning Donna approximately $8,000 sometime in early 1987, but I do not recall her advising me what the loan was for. I do know that I never spoke with the Plaintiff Elizabeth Bechtold about the lot, and consequently would never had represented anything to her about that lot.

4. I never, on any occasion, ever refused to sell Elizabeth Bechtold the condominium that I originally purchased from her in 1981. In fact, to the best of my knowledge, information and belief, there were no efforts made by Elizabeth Bechtold, either during or after the divorce, to exercise an option which I understood was given her to purchase that condominium. In fact, on the contrary, I remember being advised that Elizabeth Bechtold had selected and purchased another condominium in Clarkston, Michigan, and therefore would not be re-purchasing the condominium.

5. Elizabeth Bechtold never asked me to sell her back the condominium, and I received absolutely no communication to this effect.

6. I categorically deny being part of any conspiracy to conceal marital assets. The claim has absolutely no merit whatsoever. I find it extremely upsetting that Elizabeth Bechtold could make such allegations, which have no basis in truth whatsoever. There was no reason, in my opinion, for Elizabeth Bechtold to sue me. I have worked as a railroad conductor for 39 years, and have earned every penny that I own. At no time did I ever agree to hold, or hold, any assets, money or anything of value whatsoever for Eddie Morris in order to conceal the items or assets from Elizabeth Bechtold.

7. If sworn as a witness, I can testify competently to the facts set forth herein.

EDSEL MORRIS

Subscribed and sworn to before me
this 10th day of December, 1989.

JULIE A. RAYMOND, Notary Public
Oakland County, Michigan
My Commission Expires: 03/15/92

Appendix B-0
B-0.28
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	89-909989 CZ 4/20/89 JDG: CHARLES KAUFMAN
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	BECHTOLD ELIZABETH A VS MORRIS EDDIE M

C. WILLIAM GARRATT (P13858)
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KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

AFFIDAVIT OF DONNA PIOTROWSKI

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Donna Piotrowski, being first duly sworn, deposes and states:

1. I am the sister of Eddie Morris, a defendant in the referenced action.

2. I purchased Lot 218 of Deerwood II Subdivision, a vacant lot in Oakland County, Michigan, in February, 1987. The lot was purchased by funds which I supplied, or borrowed from my father. My brother encouraged its purchase as an investment, but absolutely had no assets or monies involved in that lot during his marriage to the Plaintiff Elizabeth Bechtold. My brother had convinced me that, due to rapid escalation of real estate prices in Clarkston, Michigan, and the widening of I-75 to that area, that, within a one-year period or so, it was possible to perhaps make as much as $10,000 on the lot. I also must say that, for some years, my husband and I have considered the possibility of moving to Oakland County. This idea was later rejected, because both of our businesses are in Wayne County, and would be difficult to move given the customer bases.

3. At the time my brother encouraged me to buy the lot, he indicated that he had been interested in it as an investment. However, because he was going through his divorce, and had virtually no assets at his disposal, and could not have afforded the investment.

4. My brother had absolutely no financial interest in the lot, and no legal rights to the lot, during the course of his marriage to Elizabeth Bechtold.

5. After the divorce of Eddie Morris from Elizabeth Bechtold, I approached him, and told him that my husband and I had decided, instead, to purchase a lot in Westland. I also told him that I did not want to continue to hold the lot in Clarkston for investment purposes. Therefore, I sold the lot to Eddie Morris for the money that I had in the lot, including the money my father had loaned me.

6. It is my best information and belief that when the lot was sold, it ended up in a loss of several thousand dollars.

7. I have never spoken to Elizabeth Bechtold about this lot, and she never inquired about the lot. I have never, at any time, concealed any assets from Elizabeth Bechtold, or made any misrepresentations whatsoever to her.

8. I have never entered into a conspiracy to conceal marital assets from Elizabeth Bechtold, or to hurt her financially in any way.

9. If sworn as a witness, I can testify competently to the facts set forth herein.

/s/ Donna Piotrowski
DONNA PIOTROWSKI

Subscribed and sworn to before me
this 17th day of December, 1989.

/s/ Elizabeth Doyle Morris
Notary Public

Note: An executed copy will be provided prior to or at time of hearing.

Appendix B-0
B-0.31
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

-VS.-

EDDIE M. MORRIS, EDSEL MORRIS,
AND DONNA PIOTROWSKI
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
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KENNETH B. MCCONNELL (P17326)
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Attorney for Defendants
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(313) 425-9055

AFFIDAVIT OF E. MICHAEL MORRIS
IN SUPPORT OF REQUEST FOR ATTORNEYS' FEES

Appendix B-0
B-0.32
Affidavits and Papers Filed In The Trial Court

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

E. Michael Morris, being first duly sworn, deposes and states:

1. I am an attorney duly licensed to practice law in the State of Michigan.

2. I have been an attorney since November, 1980. I graduated from Wayne State Law School, where I was a Note and Comment editor on the *Wayne Law Review*; and, since leaving law school, I have been involved in extensive trial work and complex commercial litigation.

3. Prior to my departure from Garratt's law firm in August, 1988, Garratt was charging clients an hourly rate for my time at $135.00 per hour.

4. Since leaving Garratt's law firm, my hourly rate was established at $125.00 per hour. However, as to both hourly and contingent work which has come to a conclusion since leaving the Garratt law firm, my hourly rate has exceeded, to the best of my knowledge, information and belief, the sum of $150.00 per hour.

5. The fees which I charge for my services are reasonable given the nature of my practice and my experience, as well the marketplace, with which I am familiar.

6. In the entitled action, from November 1, 1989 through December 17, 1989, I expended 141.6 hours performing services. Those hours do <u>not</u> include the time spent between October 19, 1989 and November 1, 1989, and do not include the time spent during the hearing on the motion to dismiss, for sanctions, etc. At $125.00 per hour, this time would equal $17,700.00. At $150.00 per hour, this time would equal $21,240.00.

7. I can affirmatively represent that all services performed on this matter were reasonable and necessary.

8. If sworn as a witness, I can testify competently to the facts set forth herein.

_____
E. MICHAEL MORRIS

Subscribed and sworn to before me
this 20th day of December, 1989.

_____
JULIE A. RAYMOND, Notary Public
Oakland County, Michigan
My Commission Expires: 03/15/92

Appendix B-0
B-0.34
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

-vs.-

EDDIE M. MORRIS, EDSEL MORRIS,
AND DONNA PIOTROWSKI
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

E. MICHAEL MORRIS (P31547)
Defendant, In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF KENNETH B. MCCONNELL

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Kenneth B. McConnell, of Bloomfield Hills, Michigan, being first duly sworn, makes this affidavit of his time records in this cause, and he does so based upon his own personal knowledge and he is competent to admissibly testify with factual precision to the matters herein contained.

Appendix B-0
B-0.35
Affidavits and Papers Filed In The Trial Court

1. My shopbook time records reflect the following factual story:

DATE	DESCRIPTION	TIME
10/31/89	Revised pleadings, Complaint; conference with Ed re issues, his proposed response, etc.	3.50
11/08/89	Conference with Ed re motion to Dismiss.	1.50
11/27/89	Conference with Ed re posture.	1.00
11/29/89	To Detroit re more Garrett foolishness; attend deposition of Ed Morris 1:20 - 5:00 p.m.	4.50
12/05/89	Conference with Ed re Motion to Dismiss (supplement).	1.50
12/17/89	Prepare for tomorrow's hearing; plow through 6 lbs. of paper.	4.00
12/18/89	Hearing before Judge Kaufman (9:00 a.m. - 1:00 p.m.); breakfast conference earlier with client.	6.00
	TOTAL	22.00

2. The order that Judge Kaufman entered as submitted by me with the Judge's longhand additions thereto, is fine and no relief from the same is sought. However, the court has my proxy to do anything it deems fair now that it has the hard descriptive facts that were mere representations of mine prior to the entry of the order.

KENNETH B. MCCONNELL

Subscribed and sworn to by me
this 20th day of December, 1989.

_____

M. YVONNE MILLER, Notary Public
Oakland County, Michigan
My Commission Expires: 02/19/90

APPENDIX C

Relevant Michigan Court Rules and Notes[1]

MICHIGAN COURT RULES OF 1985
RELEVANT RULES AND NOTES

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER 1.100 APPLICABILITY; CONSTRUCTION

RULE 1.101 TITLE; CITATION

These rules are the "Michigan Court Rules of 1985". An individual rule may be referred to as "Michigan Court Rule _____", and cited by the symbol "MCR _____". For example, this rule may be cited as MCR 1.101.

Staff Comment

* * *

... On July 29, 1983, the Supreme Court ordered that the revised draft be published for comment. See 417A Mich. A committee of judges and lawyers was appointed to review the comments and to advise the Court as to whether further modifications should be made. After the submission of the committee report, the Supreme Court again considered the rules and adopted them in the present form.

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[1]Most of the relevant Michigan Court Rules are contained in Appendix D to the Petition for Writ of Certiorari, and hence, are not duplicated here. However, because Petitioner omitted a key sentence from the comment to MCR 1.101, that portion has been provided here.

* * *

RULE 7.301 JURISDICTION AND TERM

(A) Jurisdiction. The Supreme Court may:

(1) review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223-9.226);

(2) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302);

(3) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);

(4) give an advisory opinion (see Const 1963, art 3, Sec. 8);

(5) respond to a certified question (see MCR 7.305);

(6) exercise superintending control over a lower court or tribunal (see, *e.g.*, MCR 7.304);

(7) exercise other jurisdiction as provided by the constitution or by law.

* * *